

1 CALIFORNIA HIGH-SPEED RAIL AUTHORITY

2 MONTHLY MEETING

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6

TRANSSCRIPT OF PROCEEDINGS

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10 Sacramento City Hall

11 915 I Street, City Council Chambers

12 Sacramento, California 95814

13

14 Thursday, March 1, 2012

15 10:03 a.m.

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23 BRITTANY FLORES

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1 A P P E A R A N C E S
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3 BOARD MEMBERS

4 Mr. Dan Richard, Chairperson

5 Mr. Tom Richards, vice-chair

6 Ms. Lynn Schenk, vice-chair

7 Mr. Bob Balgenorth

8 Mr. Russel Burns

9 Mr. Jim Hartnett

10 Mr. Michael Rossi

11 Mr. Thomas Umberg

12

13 STAFF

14 Mr. Roelof van Ark, Chief Executive Officer

15 Ms. Carey Moore, Executive Assistant

16

17 ALSO PRESENT

18 Mr. Thomas Fellenz, Esq., Legal Counsel

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1 SACRAMENTO, CALIFORNIA, February 2, 2012

2 10:03 a.m.

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5 CHAIRMAN RICHARD: Good morning, ladies and
6 gentlemen. We will call the meeting of the California
7 High-Speed Rail Authority to order. Will you call the
8 role, Ms. Toof. I'm sorry. We have a new board
9 secretary.

10 MS. MOORE: Mr. Richards.

11 MR. RICHARDS: Here.

12 MS. MOORE: Ms. Schenk.

13 MS. SCHENK: Here.

14 MS. MOORE: Mr. Balgenorth.

15 MR. BALGENORTH: Here.

16 MS. MOORE: Mr. Burns.

17 MR. BURNS: Here.

18 MS. MOORE: Mr. Hartnett.

19 MR. HARTNETT: Here.

20 MS. MOORE: Mr. Rossi.

21 MR. ROSSI: Here.

22 MS. MOORE: Mr. Umberg.

23 MR. UMBERG: Here.

24 MS. MOORE: Chairman Richard.

25 CHAIRMAN RICHARD: Here.

1 So I'm sorry. The first call was for
2 Mr. Richards. Okay. And then the second was for
3 Chairman Richard.

4 MR. RICHARDS: We're both here.

5 CHAIRMAN RICHARD: We're both here.

6 So Mr. Umberg, will you lead us in the Pledge of
7 Allegiance.

8

9 (Pledge of Allegiance recited.)

10

11 CHAIRMAN RICHARD: First item is the
12 Approval of the Board Minutes.

13 MS. SCHENK: Motion to approve.

14 CHAIRMAN RICHARD: Motion by Vice-Chair
15 Schenk.

16 MR. HARTNETT: Second.

17 CHAIRMAN RICHARD: Second by Mr. Hartnett.

18 Please call the role.

19 MS. MOORE: Mr. Richards.

20 MR. RICHARDS: Yes.

21 MS. MOORE: Ms. Schenk.

22 MS. SCHENK: Yes.

23 MS. MOORE: Mr. Balgenorth.

24 MR. BALGENORTH: I abstain. I wasn't at the
25 meeting. So --

1 MS. MOORE: Mr. Burns.

2 MR. BURNS: Yes

3 MS. MOORE: Mr. Hartnett.

4 MR. HARTNETT: Yes.

5 MS. MOORE: Mr. Rossi.

6 Mr. Umberg.

7 MR. UMBERG: Aye.

8 MS. MOORE: Chairman Richard

9 CHAIRMAN RICHARD: Aye.

10 Before we proceed with the -- actually, I'm
11 sorry. I have one matter of business that I need to do
12 related to our last meeting. Because we had closed
13 session at the last meeting, I had to close the meeting.

14 At the February 2nd meeting, the closed session
15 on the item to discuss employment of a new Chief
16 Executive Officer was left open. At this time, I'm
17 closing that item for which there is nothing to report
18 in open session.

19 That same item is on the closed session agenda
20 for today's March 1 meeting. The board will meet in
21 closed session today on this item and report back after
22 the closed session as appropriate.

23 Mr. Fellenz, did I do that appropriately?

24 MR. FELLENZ: Yes.

25 CHAIRMAN RICHARD: I also want to announce

1 at this time that Agenda Item Number Two, Workforce
2 Development Program, is being removed from the agenda
3 for the March 1 board meeting. We'll be announcing the
4 disposition of that item at another time.

5 Before we proceed with the rest of the agenda,
6 today is a significant day for a number of reasons, but
7 the most significant of which is that it is the last
8 board meeting of our very capable Chief Executive
9 Officer, Mr. Roelof van Ark, and while he's going to be
10 making his presentation later, and while there will be a
11 number of comments from members, we have a very special
12 item, which I would now turn to Vice-Chairman Tom
13 Richards to do.

14 MR. RICHARDS: Thank you, Mr. Chairman.

15 Ladies and gentlemen, entered into the
16 Congressional Record on February 29, 2012 by the
17 Honorable Jim Costa of California recognizing the
18 service of Roelof van Ark.

19 Mr. Costa, "Mr. Speaker, I rise to recognize
20 Mr. Roelof van Ark who will soon end his term as the
21 Chief Executive Officer of the California High-Speed
22 Rail Authority. There is no textbook on how to build
23 High-Speed Rail in America. It has never been done
24 before. For the past two years, Mr. Van Ark has written
25 the first chapters of that book by dedicating himself

1 wholly to the building of the nation's first true
2 high-speed rail system in California. He deserves our
3 recognition and true appreciation for all the work he
4 has done for California and our nation.

5 For three decades, Mr. Van Ark has worked on
6 high-speed rail and other transportation systems
7 throughout the world. Before becoming only the second
8 chief executive since the Authority was formed in 1996,
9 he led Alstom Transportation Inc for five years.
10 Mr. Van Ark previously worked in Germany and South
11 Africa for Siemens Transportation Systems, a global
12 leader in high-speed rail systems. During his more than
13 twenty-year tenure with Siemens, he successfully
14 constructed complex infrastructure projects such as the
15 Skytrain in Bangkok, several subways throughout China,
16 and high-speed rail lines in Germany. He ended his time
17 with Siemens while working in Sacramento as president
18 and Chief Executive Officer of the company. His
19 lifetime of experience enabled him to bring such
20 tremendous expertise and leadership to the
21 implementation of California's high-speed rail project.

22 I applaud Roelof van Ark for his years of
23 tireless work on behalf of the California High-Speed
24 Rail Authority and the State of California. Mr. Van Ark
25 has truly laid the groundwork for the nation's first

1 high-speed rail system, and I hope he will join me in
2 riding the first train that departs from San Francisco
3 in route to Los Angeles by the San Joaquin Valley. All
4 Californians will be better off due to the service and
5 sacrifice of this great leader.

6 Mr. Speaker, it is with great appreciation that I
7 ask my colleagues to stand with me in thanking Roelof
8 for his work in advancing modern modes of transportation
9 within the United States and around the world. Please
10 join me today in recognizing the commitment, dedication,
11 and success of Mr. Roelof van Ark and wish him well as
12 he embarks on new endeavors." Jim Costa, Member of
13 Congress, 20th Congressional District, California.

14 CHAIRMAN RICHARD: Thank you very much.
15 That was an excellent way to begin our meeting, and I
16 think we'll be bookended with some other comments at the
17 end.

18 At this time, I'm going to open the floor for
19 public comment. I have speaker cards that have been
20 filled out. If you wish to speak on an item, please
21 fill out one of the green cards. We will take them in
22 order as they have been received, and as I have
23 indicated in the past, we do allow our public officials
24 to speak first, but I do not see any cards that appear
25 to be from representative public officials. Let me also

1 say that this is the first meeting of the High-Speed
2 Rail Authority that Supervisor Perea from Fresno has not
3 attended, and it is because we have excused him to be in
4 Washington, DC at this point where he is pursuing
5 high-speed rail efforts. So without objection, I would
6 like the record to show that we recognize Supervisor
7 Perea as a constant presence here, and we sense his
8 presence even today. With that, we'll begin -- we'll
9 set the time for two minutes each.

10 Mr. Ralph Ochoa, representing City of Palo Alto.

11 Good morning, sir.

12 MR. OCHOA: Good morning, Mr. Chairman,
13 board members. My name is Ralph Ochoa. I'm an attorney
14 representing the City of Palo Alto.

15 On February 16 of this year, the City of Palo
16 Alto submitted a letter detailing it's numerous concerns
17 with the Authority's revised draft program EIR. One of
18 the major concerns highlighted in said letter was the
19 issue of the blended two-track system versus the
20 four-track system.

21 In the draft 2012 business plan, the Authority
22 indicated that it's unlikely that sufficient funds are
23 available for a four-track system within the Caltrain
24 alignment, and therefore, that the two-track system
25 would be considered in future analysis. However, the

1 current draft program EIR continues to address a
2 four-track system and does not adequately address a
3 blended two-track system. The draft program EIR needs
4 to provide an analysis of the permanent two-track system
5 and the Caltrain alignment. The current draft program
6 EIR does not address alternative based and blended
7 implementation plans. It does not adequately analyze
8 and compare the environmental impacts on communities of
9 various alternative alignments. It does not describe
10 the extent and impacts of imminent domain. It does not
11 address program impacts on surface streets.

12 The City of Palo Alto respectfully requests that
13 the Authority review the blended two-track system by
14 issuing a new notice of preparation and begin
15 preparation of a new draft EIR. Thank you for your
16 time.

17 CHAIRMAN RICHARD: Thank you, sir. Next is
18 Diana La Come, who also is one of our constant presences
19 here.

20 Good morning. Followed by Paul Guerrero.

21 MS. LA COME: Good morning, Chairman and
22 board members. Diana La Come, President of APAC.

23 Since two of your highest level executives are
24 leaving, Mr. Van Ark and Mr. Ryan, APAC wants to refresh
25 the board's memory regarding commits made to the

1 community.

2 First and foremost, the Authority stated it would
3 comply with all federal and state regulations that are
4 required of recipients of the federal and state funds.
5 We are quite pleased to see that the authority will be
6 voting on Title 6, Nondiscrimination Policy of Program
7 Plan today. This is an affirmation of a positive
8 direction the Authority is taking.

9 I'm going to go down by number on the issues that
10 we've raised with you and the commitments that we feel.
11 Number one is setting up of a DBE numerical goal. FRA
12 stated that the Authority could set up a DBE goal on
13 this project. We understand, it's race neutral goal
14 until a disparity study is conducted, and then we can
15 move to a race-conscience goal, which raises the
16 question about the disparity study. It needs to be
17 fast-tracked. FRA said from the date of their letter,
18 which was September 15th, we should have that disparity
19 study done.

20 Three, unbundling of contracts. Both A&E and
21 construction contracts need to be unbundled. Two
22 right-of-way contracts that we thought were going to be
23 broken down so that small businesses could compete. As
24 I understand it, it's not going to happen that way. We
25 will need to look at that. The initial \$800 million

1 awarded in 2006, there are tasks that have not been
2 performed, and we've asked before about this. Look at
3 those and see if we can set those aside for small
4 businesses.

5 The small business advisory council is getting
6 underway. Thank you for that, and APAC board and
7 membership will not be retaliated against or blackballed
8 because of its applicancy efforts in this project. And
9 lastly, that you maintain the 30 percent small business
10 goal. Thank you.

11 CHAIRMAN RICHARD: Thank you very much.

12 Mr. Guerrero followed by Anthony Lusich.

13 MR. GUERRERO: Good morning, Mr. Chairman
14 and board. I represent La Raza Roundtable. We are part
15 of APAC, and on the disparity study, we want to urge
16 you, as Diane has said, to proceed immediately with it.
17 However, we have come to agree with your staff that it
18 should be a statewide disparity study and not just a
19 local one because this is a statewide project, and we're
20 not sure where we're going to go from here. According
21 to the -- some of the people I talked to in the
22 legislature, they may so want to push towards LA or
23 something. So we need a statewide disparity study.

24 I have given some handouts out, and they are part
25 of the new Code of Federal Regulations, 49CFR, part

1 26.39, which, if adopted, allows you to establish a
2 small business program on federal dollars and set aside
3 until you attain your small business goals. And we urge
4 you to look at that and attempt to adopt it or adopt it,
5 because I understand that the Federal Rail Authority
6 gave you the authority to adopt parts of 49CFR that you
7 feel will move your project along, and that's one part
8 that we think would.

9 Finally, we understand that five Design-Build
10 companies have been listed or shortlisted. Notice of
11 this has not gone out to the communities as I
12 understand. While we have notice of it, a lot of our
13 small businesses have never heard of this. And they do
14 not go onto the computer to do a worldwide web outreach
15 to see if -- on any place if there's a project out there
16 that they can bid on. They rely on the Caltranses of
17 the world, the high-speed rails of the world to do
18 outreach and then let them the know. So we urge you to
19 look at the list that we have available. We have the
20 small business list, general services, Caltrans, DBE
21 list and outreach to those people. Send them an e-blast
22 and let them know that you have five companies
23 shortlisted that would like to do that. Thank you.

24 CHAIRMAN RICHARD: Thank you, sir.

25 Anthony Lusich followed by Dan Sepulveda.

1 MR. LUSICH: Mr. Chairman Richard and
2 members of the board, thank you for allowing me the time
3 to speak with you. I'm Tony Lusich, and I'm the
4 administrator for Kern Transportation Foundation in
5 Bakersfield. The Kern Transportation Foundation is
6 dedicated to transportation education regarding Kern
7 County's future transportation needs. KTF supports the
8 development, coordination, and maintenance of an
9 effective, efficient, and reliable transportation
10 system. KTF is also committed to the concept of
11 long-range transportation planning in California. We
12 believe we need to avoid placing undue reliance on any
13 single mode of transportation. We believe it's
14 imperative to pursue all available and cost-effective
15 solutions for addressing our transportation issues. KTF
16 had supported and has asked for support for the Kern
17 County -- I'm sorry -- the California High-Speed Rail
18 Authority's efforts to establish a high-speed rail
19 system through the San Joaquin Valley.

20 This project will be an essential component to
21 addressing our future transportation needs, improving
22 the economy, and improving our air quality.

23 I'm also the president of the Local American
24 Public Works Association. I'm the past president of the
25 American Society of Civil Engineers, past president of

1 the American Conserve of Engineering Companies, and the
2 KSCE Kern County Structure Report Card.

3 The -- there are numerous local organizations
4 that have supported high-speed rail, including greater
5 Bakersfield Chamber of Commence, Home Builders
6 Association, and the Board of Realtors. Kern
7 Transportation foundation had sponsored luncheon and
8 numerous -- there was over two hundred attendees. So
9 thank you for allowing me to talk to you.

10 CHAIRMAN RICHARD: Thank you for being here
11 today, sir.

12 Don Sepulveda followed by John Berger.

13 MR. SEPULVEDA: Good morning, Mr. Chairman
14 and members of the Authority. Thank you for allowing me
15 to speak with you today. I am Don Sepulveda, the
16 executive officer for regional rail, LA County
17 Metropolitan Transportation Authority, and I want to
18 take this opportunity to address the MOU between the
19 authority and the southern California agencies.

20 Over the past several months, we have been
21 excited about the spirit of cooperation between
22 California High-Speed Rail Authority and the local
23 agencies that's gone into the development of this MOU
24 for which the groundwork has been set for us to move
25 forward to work together to develop a statewide rail

1 system.

2 Metro has been working for this transportation in
3 Los Angeles. Our \$30 million Measure R program is the
4 largest transit program in the United States, and when
5 completed, will provide additional transportation
6 options to meet the needs of our region. Furthermore,
7 our commuter rail system carries more than forty
8 thousand riders a day through Los Angeles County. In
9 addition, a portion of our systems is a part of the
10 LOSSAN Corridor, the second busiest passenger rail
11 corridor in the nation. Through these efforts, Metro is
12 committed to the importance of regional rail
13 connectivity and is building a solid base for the future
14 connection of high-speed rail in Los Angeles Union
15 Station.

16 The blended approach identified in the 2012
17 business plan and the MOU reflect a new spirit and
18 approach to meeting the needs of California.
19 Specifically, this plan references development with HSR
20 in California as part of a statewide and regional rail
21 system. This approach is the best approach to meeting
22 the statewide passenger rail needs as well as the local
23 passenger rail needs. We believe that the efforts that
24 the High-Speed Rail Authority is making for passenger
25 rail to northern and southern California as well as

1 providing an additional connection in Burbank Airport is
2 a significant part in completing or creating this
3 independent utility for the system.

4 For several months, the California agencies have
5 been working with the staff of the High-Speed Rail
6 Authority to develop this MOU and related projects. Not
7 only does this MOU outline advance investment in
8 southern California, it develops the spirit of
9 cooperation and synergy within the region. This MOU
10 expresses a renewed commitment to work with our agencies
11 to develop -- and I'll cut it short.

12 Since January, we have been working with our
13 respective boards to get this MOU approved. Many of
14 these agencies have already approved this in its current
15 format. Through its approvals, we are welcoming this
16 renewed interest in providing benefit to the region by
17 addressing these short-term transportation needs. To
18 propose change to the MOU, significantly undermines the
19 spirit of that cooperation that went into this
20 development. Many of the modifications will actually
21 force us to go back to our board, and we will lose the
22 support that we have previously garnered for this MOU in
23 this spirit of cooperation. And we want -- we are
24 looking forward to continue working with the Authority
25 to finalize this MOU and this related project list so we

1 can move forward to actually bring this system to
2 reality. Thank you very much.

3 CHAIRMAN RICHARD: Thank you, Mr. Sepulveda.

4 John Berger followed by Michael Behen.

5 MR. BERGER: Good morning, Mr. Chairman,
6 members of the board. It's a pleasure to address you
7 this morning, and thank you, Mr. Van Ark, for the
8 service that you have given California and the
9 High-Speed Rail.

10 I'm here speaking for my family who had a member
11 imprisoned by the Japanese as enslaved labor in World
12 War II. I've also been asked by the Asian Policy Unit
13 of Washington DC to bring this matter to your attention.

14 I'm asking that any Japanese companies who used
15 American Prisoners of War as slave laborers in World War
16 II not be awarded contracts from the California
17 High-Speed Rail Authority until they formally apologize
18 to those ex-Prisoners of War. It's a wound that needs
19 healing.

20 Over sixty still-existing Japanese companies,
21 such as Mitsui, Mitsubishi, Kawasaki, and Katashi used
22 American Prisoners of War as slave laborers under
23 horrific conditions. The former POWs are not asking for
24 reparation just an apology. The Japanese government
25 formally apologized two years ago, and the Japanese

1 companies should follow the example of their own
2 government.

3 I have asked your liaison to provide a list of
4 Japanese companies bidding on rail contracts and have not
5 received a response. Thank you, and I hope you will
6 correct an injustice, a wound, that after sixty years,
7 needs healing.

8 CHAIRMAN RICHARD: Thank you.

9 Mr. Behen.

10 MR. BEHEN: Good morning, Mr. Chairman,
11 members of the board. Michael Behen, City of Palmdale,
12 Department of Public Works, North LA County.

13 I'm here to -- on behalf of the City of Palmdale,
14 to say that we strongly support the California
15 High-Speed Rail blended system approach, and we'd like
16 to reiterate that the Antelope Valley alignment, as it
17 was chosen, does help us meet the region's
18 environmental, transportation, and economic development
19 challenges.

20 We are currently working with High-Speed Rail
21 Authority staff on the station area planning grant
22 application, and I wanted to point out that John Mason
23 is staff that I've been working with and he's been --
24 he's been great to work with. He's been responsive, and
25 I just wanted to mention that we appreciate it.

1 We're looking forward to a recommendation for a
2 final Antelope Valley alignment, which would allow us to
3 move forward on the environment document, and lastly, I
4 would like to say that we believe in high-speed rail.
5 Thank you for your time.

6 CHAIRMAN RICHARD: Thank you, sir. Our next
7 speaker is Frank Oliveira.

8 Mr. Oliveira, I apologize. I just now saw your
9 request to speak after the staff presentation on item 9.

10 MR. OLIVEIRA: Might not be necessary if I
11 wait, might not be necessary to speak.

12 CHAIRMAN RICHARD: All right. In this case,
13 we'll accommodate that.

14 Mr. Browning, do you -- are you in the same
15 position, or do you wish to speak now?

16 MR. BROWNING: I'd like to speak later.

17 CHAIRMAN RICHARD: All right. I'm sorry.
18 The next person who is from Bakersfield, I can't read
19 your last name Marvin -- Dean.

20 MR. DEAN: Dean.

21 CHAIRMAN RICHARD: Oh, yes. Mr. Dean. I'm
22 so sorry. I should have figured that.

23 MR. DEAN: First of all, I want to say in
24 this very room when you guys hired Mr. Van Ark, I came
25 and welcomed you here. I have watched this project for

1 a long time. I, for one, want to wish you well on your
2 new venture. I think you did a lot in terms of this
3 project. So I want to publicly say that. I also want
4 to publicly thank Vice-Chairman Tom Richards for coming
5 and speaking at our Fifth Annual Public Contractors
6 meeting in Fresno in January. I've got three items I
7 want to just make a quick announcement on that I want to
8 hand out.

9 In Bakersfield, you know, some of you know that
10 there's been a lot of efforts underway to start a
11 movement to get the -- City of Bakersfield was voted six
12 to one to oppose high-speed rail. Board of Supervisors
13 split vote three -- two to three. Oppose. You now,
14 it's the Kern guy. Some of us that have been watching
15 this and support it have formed a group, and we decided
16 to put together a group of supporters to come to public
17 forums and talk about the benefit of high-speed rail not
18 to pick a fight with those that are opposed because
19 everybody has an opinion, but we want to sell high-speed
20 rail. So there's an effort underway, and I wanted to
21 mention that.

22 Second thing I wanted to mention to you is what
23 came out of the event conference we did. We're putting
24 forward something called a San Joaquin Valley
25 Construction Academy. It's getting ready on two fronts.

1 It's getting the small businesses ready and it's also
2 working for those construction workers that want to be
3 apprentices over there.

4 And the third thing I wanted to announce is we're
5 kicking off a series of Get Ready Workshops, because we
6 think this is going to happen and the small business
7 communities have to be taking a firm approach and make
8 sure that we stay on top of what's going on and make our
9 stuff related to primes and in working with primes and
10 move to be able to work with the High-Speed Rail
11 Authority. And I'll be talking to some of the staff
12 about it later.

13 And the last thing I want to say is that I
14 support Paul and Diana, who are part of the APAC group,
15 and what their comments were. So thank you and again,
16 wish you well, and I hope you stay on as a consultant.

17 CHAIRMAN RICHARD: Mr. Dean, thank you, and
18 I apologize for my fussy brain this morning.

19 The last speaker card that I have is from -- it
20 appears to be Gerald Cauthen; is that correct?

21 MR. CAUTHEN: Right.

22 CHAIRMAN RICHARD: Good morning, sir.

23 MR. CAUTHEN: Mr. Chairman, members of the
24 board. I've listed myself as being an affiliate of Save
25 Muni San Francisco, which is maybe a little bit of a

1 stretch, but what I want to talk about briefly is
2 conductivity. Great systems of Europe, especially
3 places like Paris and London, are incredibly successful
4 partly because they're fed by such a incredibly
5 efficient feeder system. There are four metropolitan
6 areas in California that could -- to varying degrees --
7 need that same kind of conductivity, LA, Sacramento, San
8 Diego, and the Bay Area.

9 San Francisco has a -- it won't match Paris for
10 three hundred years or more, but it does have one good
11 rail spine right now, and that is, of course, the BART
12 and the Muni systems that run on Market Street. The
13 extension of the high-speed rail, when it comes, will
14 come into about six hundred feet south of Market Street,
15 and if that conductivity is wrong, it's going to make a
16 major difference in terms of the trips that people will
17 use in the Bay Area.

18 Not only do 11 buses come into that new terminal,
19 but BART and Muni could be connected at a relatively
20 minor cost, which is not your cost. By underground
21 moving ramps directly from the lower level of the
22 transbay terminal into the mezzanine level of the Bart
23 Embarcadero station.

24 To me, that is something that you would be
25 obviously participating in the cost of extending BART.

1 I mean, extending the high-speed rail system, but it's
2 not totally a high-speed rail budget item. But it's
3 something that you want to place as a high priority if
4 the -- California forgets conductivity and puts
5 something down that isn't adequately linked, it will
6 never be the kind of a system that everybody wants,
7 which is more like what you might see in France and
8 Japan and even England and Germany and these cities,
9 Spain. They do this, and we need to not forgot that
10 conductivity. Thank you.

11 CHAIRMAN RICHARD: Thank you, sir. And
12 you'll be happy to know that I had that very
13 conversation with officials in San Francisco this
14 morning.

15 I have no other speaker cards at this time.

16 Okay. We will move on then on our agenda. The
17 next item is Item 3. And members, I will be recusing
18 myself from any discussion or deliberations or decision
19 on this item by virtue of the fact that one of the
20 members of one of the five project teams company that I
21 had as a past client. I don't have any current
22 relationship with them, but I'll be recusing myself from
23 this. Vice-Chair Lynn Schenk has graciously agreed to
24 preside over this portion of the agenda. I'll be
25 stepping out of the room for this item. Thank you.

1 MS. SCHENK: Thank you. I'm ready for
2 the -- oh, okay. The Chairman has left the room.

3 Before we begin, I'd like to just make sure that
4 the record reflects and that the audience knows that the
5 members of this authority took a real deep dive and the
6 staff has been very, very generous with their time in
7 helping us individually to review this and understand it
8 and to answer our questions. So with that, Tom.

9 MR. FELLENZ: Okay. Thank you, Madame
10 Vice-Chair, members of the board, Mr. Roelof van Ark,
11 what we're going to discuss today for Item Number 3 is
12 the request for proposal construction package number
13 one, and we're going to ask the board to approve the RFP
14 based upon the term sheet. Secondly, to approve the
15 stipend that we're suggesting, and then finally, approve
16 the RFP evaluation criteria.

17 This construction package number one is a
18 Design-Build construction package, and the High-Speed
19 Rail Authority has the legal authority to enter into a
20 Design-Build procurement, and this is in the Public
21 Resource Code. There's a specific statute that allows
22 that.

23 The reasons to select a Design-Build procurement
24 as opposed to other types of Design-Build is that it can
25 save money, time, and end result in fewer disputes. And

1 the reason for that is because the owner is transferring
2 some of the risks over to the design builder, and it
3 provides an opportunity for innovation and in the
4 delivery of the public project and also, like I had
5 mentioned, it saves time and money.

6 There are five construction packages in the
7 initial construction section in the Central Valley.
8 This is the first of the five that goes through the City
9 of Fresno. The first four packages are to lay the
10 pre-track work. The fifth one is to lay the track over
11 the entire length. And so the scope of this particular
12 construction package is going to be shown on the map and
13 also the timeline. This slides the initial construction
14 section, which is a total of either a hundred and --
15 well, between 130 miles and 80 miles depending on which
16 selection on the routes are taken and also the expenses
17 associated with those. In addition, there are two
18 planned stations along this route, and those would be at
19 Fresno and Kings, Tulare.

20 The next slide shows a more detail description
21 and picture of the package, construction package number
22 one. As you can see, it goes from Avenue 17 on the
23 northern piece down to the East American Avenue. There
24 are three options. The first one CP1A is a length of
25 approximately 23 miles. CP1B is a one-mile length

1 through the station of Fresno, and then CP1C a five-mile
2 section on the south end that takes you through the
3 metropolitan or urban area, the City of Fresno. Let me
4 just point out, too, that there is a note on here that
5 says it depends -- "This route is dependent on the
6 ROD/NOD."

7 As you know, you haven't voted on that yet. So
8 this being depicted here in the most northern piece, as
9 you can see goes along the BNSF route and that is
10 depicted in the preferred alternative that you had
11 selected earlier in the meeting, and that's why we're
12 describing it this way, but you will be deciding the
13 final route of the environment process when you certify
14 that environmental document.

15 This just shows a timeline for this construction
16 package number one. As you can see, we're asking for
17 the board's approval of the terms sheet. It represents
18 the critical terms in this construction package in the
19 meeting today. The Authority is required to go before
20 the Public Works Board to seek their approval. We're
21 now on calendar for their approval on March 9th.
22 Assuming we get the approvals from this board and from
23 the Public Works Board, we'll then be issuing the RFP to
24 the shortlist proposers. And as you know, because we
25 have been keeping you updated, there are five

1 shortlisted proposal teams at this time. We have had
2 some one-on-ones that we gathered some information from
3 them to help us modify and define the term sheet, which
4 you have in front of you, and we think it's much
5 improved. So on the March 16, we'll share this term
6 sheet. Because it's a procurement process, it's a
7 confidential RFP that we'll be sharing with them.

8 And then they're going to be putting together
9 their proposals between March 16 and we expect those to
10 be submitted August or September. Then in -- later in
11 the year, 2012, we'll be evaluating those proposals for
12 the purpose of selection. We expect to award the
13 contract sometime at the end of 2012, and we think we
14 will have to come before the board for your approval on
15 that RFP, and then sometime in early 2013, there will be
16 a notice to proceed.

17 As you can see, the date for completion of this
18 construction package, which is now estimated to be about
19 \$1.5 billion, would be in the middle of 2016.

20 We have a few people here who are going to make
21 presentations on various aspects of the RFP. First,
22 we're going to have a small business enterprise policy
23 and goal presentation by Pat Padilla, president of Behen
24 and Associates, and then the right-of-way is going to be
25 discussed, too, because that is on the critical path for

1 this, and it's the responsibility of this High-Speed
2 Rail board to acquire the property, and that will be a
3 presentation by Patricia Jones of the High-Speed Rail
4 Authority. And then on the engineering aspects on the
5 request for proposal is -- we're going to have Hans van
6 Winkle make a presentation. Then I'll continue with the
7 presentation beyond that to talk about the legal
8 contractual conditions, the best value selection
9 technique, stipends, then offer you the board's
10 recommendation.

11 So at this time, Pat Padilla.

12 MS. PADILLA: Thank you, Tom. Good morning,
13 Vice-Chair as well as members of the board and Chief
14 Executive Officer, for the opportunity to present the
15 Authority small business program and policy and address
16 and highlight for you the aspects of the program that
17 will be applicable to this initial Design-Build project.

18 As committed by the board to ensure that both the
19 program and the goal is applicable to all phases of your
20 procurement process as well as contracting opportunities
21 that present opportunities for small businesses, the
22 thirty percent goal is well integrated and incorporated
23 into this initial release for this Design-Build project.
24 The thirty percent small business goal is consistent and
25 inclusive of the disadvantaged business enterprises,

1 micro businesses, as well as disabled veteran business
2 enterprises. The -- what it is calling out for is a
3 mandatory outreach by the Design-Build teams that are
4 bidding and proposing on these projects to ensure that
5 the teams are representative of the available and
6 diversity of our communities as it relates to industry
7 and small business opportunities.

8 It also calls for the design builder to develop
9 and implement, which is probably one of the most a
10 crucial elements of the program, a performance plan that
11 will lay out the strategy that they will employ to
12 ensure that innovation and creative to meet the overall
13 thirty percent goal that the board has committed to
14 ensure that the communities have ample opportunity to
15 participant.

16 It will also include small business participation
17 data gathering, which is essential to capture the
18 utilization on an ongoing basis not from their initial
19 commitment but rather beyond that. So initially, the
20 design builders will and have signed affidavits
21 committing to demonstrate good faith efforts
22 aggressively to meet the thirty percent goal, but they
23 will also be required to submit monthly reports to
24 demonstrate their attainment. And attainments will be
25 based on dollars paid on each of those commitments, and

1 as new firms are added on as projects are -- not
2 projects but rather packages -- packages are released
3 for opportunities that they will comply with the small
4 business program plan as it relates to those areas.

5 Monthly oversight and monitoring will be
6 performed by the authority to ensure prompt payment
7 provisions are adhered to so that timely payments are
8 made to small businesses. Another area that I
9 overlooked in looking at my notes was a provision of
10 ongoing technical assistance that must be afforded to
11 small businesses to assure their success on the project
12 in an area of kind of a seeming approach to assure that
13 they have a venue to address issues and get those
14 quickly remedied to move forward and be successful on
15 the project.

16 The program, as the emphasis of the program
17 basically complies with Title VI of the Civil Rights
18 Act, in all related staffing to ensure diversity of the
19 availability of all communities representative in this
20 program. That basically summarizes the highlights of
21 the SB program as well as the application of the goal.

22 MS. SCHENK: I think that what we ought to
23 do is as each segment is completed, turn to questions or
24 comments from the Authority board. So on this -- on the
25 small business enterprise section, are there any? Yes,

1 Mr. Umberg.

2 MR. UMBERG: Thank you, Ms. Padilla.

3 Congratulations, by the way, on your program, creating
4 the program for the High-Speed Rail Authority.

5 What are the sanctions if they, one, don't meet
6 the goal, and, two, with respect to payment? So payment
7 is made to one contractor with the assumption it's going
8 to be made to, for example, a small business. If that
9 doesn't happen, what are the sanctions?

10 MS. PADILLA: I'm going to turn this over to
11 general counsel. I know that we will be having a
12 mechanism where they will be providing monthly
13 assurances that they have complied with prompt payment
14 provisions that are set forth in the contract, and
15 currently, the Authority is considering very stringent
16 requirements in terms of subcontractor payments from the
17 prime receipt of payment, greater than the California
18 Public Contract Code of ten days' receipt payment. They
19 are actually considering a seven-day turnaround. We
20 will be asking them to provide assurances that they are
21 in full compliance.

22 So the third party complaint is received. In
23 terms of, you know, it will be reviewed, and they will
24 be asked to provide evidence that they are in
25 compliance. So that's as far as I can take it in terms

1 of the program. In terms of sanctions, I would need to
2 turn that over to general counsel.

3 MR. FELLENZ: We don't really have any
4 specific sanctions per se. It's an aspirational goal so
5 that there wouldn't be the opportunity to have specific
6 sanctions.

7 MR. UMBERG: So if I understand this
8 correctly, somebody bids and they say, we're going to
9 meet the goal of -- whatever it may be -- thirty percent
10 small business, right. It turns out that they only meet
11 20 percent; there's no consequence?

12 MR. FELLENZ: Well, during the RFP process,
13 the plan, the small business plan, will be part of the
14 selection process for the RFP and for the other
15 proposals. So in that manner, we're going to be making
16 sure that the plan itself will be implemented. It could
17 be implemented, and it will be effective. And as Ms.
18 Padilla said, we're going to have monitoring along the
19 way also.

20 MR. UMBERG: Okay. And maybe I don't
21 understand it but you give -- someone says they're going
22 to comply, and they don't comply. For whatever reason,
23 they don't comply. They're at twenty percent or two
24 percent, can anything be done?

25 MR. FELLENZ: Because it's just an

1 aspirational goal, there wouldn't be an opportunity to
2 impose sanctions. So --

3 MR. UMBERG: Okay. Ouch, number one.

4 Number two, with respect to payments, so the general
5 gets paid or the prime gets paid, and they don't pass
6 that along to the subcontractor; are there any sanctions
7 there?

8 MR. FELLENZ: There are --

9 MS. PADILLA: So for the outstanding
10 payment, there's a two percent application of liability
11 to a contractor that does not comply. That's the Public
12 Contract Code. Separate and apart from that, the
13 Authority is likely to impose additional penalties
14 associated with noncompliance --

15 MR. UMBERG: So we can -- so let's say a
16 subcontractor is owed \$100,000. For whatever reason,
17 they're not paid \$100,000 that has nothing to do with
18 their performance. Then the prime contractor gets
19 assessed the two percent penalty; is that right?

20 MS. PADILLA: It can get assessed the two
21 percent penalty against the affected subcontractor or
22 sub-consultant not paid in conformance with that.

23 MR. UMBERG: Right.

24 MS. PADILLA: And that's by statute.

25 Separate and apart from that, the Authority can apply

1 the two percent penalty for violations that are noted
2 and identified.

3 MR. UMBERG: And who gets that two percent
4 or four percent as the case may be?

5 MS. PADILLA: I imagine it would go back to
6 the general fund, but I'm not exactly positive.

7 MR. UMBERG: It doesn't go to the sub.

8 MS. PADILLA: No. There is an application
9 that the percent owed be paid to the sub, but separate
10 and apart from what they are owed and what the
11 contractor would be obligated to pay, the Authority can
12 impose an additional two percent, and it has been done
13 in the past on other contracts.

14 MR. UMBERG: Okay.

15 MR. VAN ARK: I think I'd like to just point
16 out, Madame Chair and Mr. Umberg, one of the advantages
17 we've got, obviously, in our program is we've got a
18 repetition of these packages. So clearly, although
19 these are goals that they have to achieve, in any
20 further evaluation for the next rounds, we have and can
21 be able to do a completely different evaluation of those
22 bidders if they do not meet the goals that they
23 originally set up.

24 So I mean, the advantage of a project like a
25 high-speed rail project which has got continuous

1 contracts, one after the other, is that we can consider
2 all those in further and later evaluations.

3 MR. UMBERG: Let me just ask a following
4 question then. In the evaluation, will we be asking
5 with respect to their compliance in other state or
6 federal contracts? Will that be part of the evaluation?

7 MR. FELLENZ: Yes, that is part of the
8 evaluation. So we're looking at their past history and
9 their success in implementing these types of programs.

10 MR. UMBERG: Okay.

11 MS. SCHENK: Any other questions? Yes.

12 MR. RICHARDS: Thank you, Madame Chair.

13 I guess I'm confused a little bit. So it's
14 not -- we've got a policy but the -- reaching that
15 policy isn't based then on best effort. It's basically,
16 you meet the policy. Is that what we're doing?

17 In other words, a contractor can say, "Well, I
18 extended the best efforts I could. I wasn't able to
19 find the contractors to meet the DBE requirements."
20 What happens in that case? Is that still -- are we
21 still able to -- to cause this two percent penalty? How
22 does that work?

23 MS. PADILLA: We're talking about two
24 things. One is the prompt payment application, and then
25 I believe what you're addressing, Director, is the

1 failure to meet the overall goal.

2 MR. RICHARDS: Okay. Yes, I am.

3 MS. PADILLA: There are ongoing efforts to
4 do so. There is going to be, as the Chief Executive
5 Officer expressed in the program that you adopted, we
6 did have ongoing monitoring efforts. We will be issuing
7 notices to secure. It will be unsatisfactory and in
8 breach of contract if they do not adhere to demonstrate
9 good faith efforts to meet that goal.

10 At the end of the day, if the goal was not met,
11 that's why I defer to general counsel to address those
12 remedies that will be available or sanctions or
13 penalties, but there will be an issue early on if they
14 fail to meet the contract terms and conditions. And
15 when they sign that letter of affidavit, they are
16 stating that they are committed to demonstrating and
17 exercise good faith efforts aggressively to meet that
18 goal, and whatever they do commit to at the time of
19 award, we'll use those records because that has their
20 commitment against their contract.

21 So they may come in more ambitious than the
22 thirty percent overall goal and they may have committed
23 to a 38 percent. That would be the goal of record, that
24 will be used as a barometer in monitoring their
25 performance. And as he said, it will be ongoing at

1 every phase of the project, and if they are not pursuing
2 it, they will have to rectify their performance plan to
3 remedy and address it appropriately to meet those
4 requirements.

5 MR. RICHARDS: Okay. Thank you.

6 MR. UMBERG: That's my question. Or what?

7 MS. PADILLA: At the end of the day, if they
8 do not and they fail to make good faith efforts to
9 exercise to meet that goal, that's where you have an
10 issue of noncompliance. The contractor failed to meet
11 the critical components. You don't get penalized
12 necessarily for not meeting the goal. What you do get
13 penalized for is where they failed to meet their
14 contractual obligation.

15 MR. UMBERG: So you terminate the contract?

16 MS. PADILLA: I believe the beach of
17 contract is always available, but most importantly, it
18 may be, quite honestly, a situation where they committed
19 to a 37 percent goal operating with good intent to meet
20 that goal, have fulfilled every aspect of what our
21 standards in application are in evaluating a good faith
22 efforts, and at the end of the day, for whatever
23 reason -- a firm goes out of business, they couldn't do
24 a substitution quick enough to readily address that
25 issue and not disrupt schedule and significant cost.

1 Their are a number of factors that would be considered.

2 They may come in, let's say, with a 28 percent
3 goal. Would we still, at the end of the day, when I do
4 a project closeout as it related to this project, find
5 them responsive? Yes, if those areas are acceptable
6 that I can demonstrate to you and you will be given
7 monthly reports as requested earlier on as to our review
8 of their compliance relative to those areas.

9 So it will be not be a surprise or should not be
10 a surprise in any area that it hasn't been addressed,
11 but there may be instances where it was found to be
12 acceptable to not meet that target.

13 MS. SCHENK: Unless there are other comments
14 on this particular issue, I'd like to suggest that
15 staff, and I'm talking to you Tom, that staff -- you can
16 tell that this is of importance to every member of this
17 Authority -- that you flush this out a little bit,
18 because I, too, am uncomfortable with nice words and
19 goals. But, you know, at the end of the day, we're the
20 staff, and I, for one, would like to have that laid out
21 in greater detail. It sounds like Mr. Umberg would and
22 others. So if we could get that, perhaps at the next
23 meeting, we'd appreciate that.

24 MR. FELLENZ: Sure. We'll put that on the
25 agenda for the next meeting.

1 MS. SCHENK: Any other members want to
2 comment on that particular segment?

3 I would just like to say that in my many years in
4 government, I've seen this particular issue go from
5 being an afterthought to being a central thought, and
6 for this Authority and for members that have proceeded
7 us here and ones that are here today, this is a very,
8 very important and integral part of this project. We
9 want to see this be a model going forward. So in every
10 aspect of every sentence between the words, we want to
11 see action. And, for example, Mr. Guerrero talked about
12 the communication, and for those of us who have been in
13 small business, it really is a difficult stretch.

14 So putting it on the website is terrific, but
15 where we say, "Mandatory outreach by the primes
16 competing." I hope that we're going to really drill
17 down and find out what their plan is to reach out. How
18 are they going to reach these small businesses and micro
19 businesses and disadvantaged businesses that
20 Mr. Guerrero was referencing in his remarks?

21 So I guess, in sum, I, for one, take this very
22 seriously as do my colleagues, want to see the specific
23 plans not just the words, and I know you agree with that
24 Ms. Padilla.

25 MS. PADILLA: I do agree with that. Thank

1 you.

2 MS. SCHENK: Thank you. So if we're done
3 with this segment --

4 MS. PADILLA: Can I just add one point
5 regarding the last comment you made. We are meeting
6 with all the design builder shortlisted firms, to go
7 over these requirements with them. So that is -- it
8 will be a mandatory workshop that they attend. So we
9 will be doing that.

10 MS. SCHENK: Tom, did you want to set this
11 up. Okay. Thank you.

12 MR. FELLENZ: The next slide, Patricia Jones
13 will be presenting.

14 MS. JONES: Good morning, Madame Vice-Chair,
15 and board members and Mr. Van Ark. As Tom mentioned,
16 I'm Patricia Jones with the Authority and -- and also as
17 Mr. Fellenz mentioned, right-of-way is on a critical
18 path for this package, and the Authority is responsible
19 for and assuming the risks of right-of-way delivery.

20 The risks include consistent funding availability
21 and including legislative approval for both the
22 resources required to deliver the right-of-way and the
23 cost of acquisition and relocation. Environmental
24 milestone approvals, level of acceptable streamline
25 processes for right-of-way approvals through the Public

1 Works Board.

2 The general provision of the Design-Build RP will
3 include the requirements of the right-of-way delivery
4 including but not limited to roles and responsibilities
5 of the Authority and the Design-Build contractor,
6 administrative reporting requirements, identification of
7 additional right-of-way, the process and
8 responsibilities, and demolition and clearance.

9 The RFP will include a right-of-way acquisition
10 plan with a list of parcels within construction package
11 1-A and B with 1-C following after appropriate
12 environmental milestones for the Fresno to Bakersfield
13 documents. The RPF also provides notice that
14 acquisition of additional environmental requirements
15 identified by the contractor, if any, may require up to
16 24 months' leave time for access.

17 Do you have any questions that I may address?

18 MR. UMBERG: One question. This is an issue
19 I've raised before, and I'm not sure if staff is quoted
20 or not. I understand we're in a contract with Caltrans
21 to provide some of the personal to acquire the
22 right-of-way. On other projects, Caltrans has actually
23 acquired the right-of-way and then transferred it to the
24 entity. So, for example, here, have we researched
25 having Caltrans actually do the acquisition and then

1 after it's acquired, then transfer it to the High-Speed
2 Rail Authority?

3 MS. JONES: Yes. Caltrans has indicated
4 that they do not have the viabilities to assist us in
5 that manner. The resources that they have agreed to
6 provide, and the agreement is pending, are attorneys who
7 are practiced in imminent domain. So they can assist us
8 in that matter.

9 MR. UMBERG: So Caltrans doesn't have the
10 resources to be able to acquire the right-of-way?

11 MS. JONES: They don't. That's what they've
12 told us.

13 MR. UMBERG: And we will?

14 MS. JONES: We will enter our right-of-way
15 RFP that is pending. We will have that in place by July
16 first. Then we will begin our acquisitions -- or it's
17 anticipated that after July first, we'll be able to
18 start making the first written offers. We'll have our
19 contractors in place at that time. Right now we have,
20 for preliminary right-of-way activities including
21 appraisals, we're handling that through our regional
22 consultants, and they have a subcontractors on that
23 right-of-way work through the two prime contractors on
24 the segments.

25 MR. UMBERG: Thank You.

1 MR. VAN ARK: Okay. Madame Chair,
2 Mr. Umberg, there's a paper that we have prepared. I
3 will send them to you as board members being prepared a
4 while ago together with Caltrans, Department of Finance,
5 and ourselves, and in which we did the investigation as
6 to whether Caltrans was in a position to do this work on
7 our behalf. There are some differences between how
8 Caltrans has to do their work and also their workload,
9 and it is correct that they do not have the capacity.

10 The issue is, too, that Caltrans cannot
11 subcontact this type of work, which we can by statute.
12 We're in a different position, and we need in the
13 short-term, as I said, approximately a hundred people to
14 do this work for us. The report references all of this,
15 and the comment, as I understand, between all of us is
16 that they cannot, in the short-term, meet that
17 requirement. And I think that's one of the reasons why
18 the statute was written in that way knowing that
19 High-Speed Rail is going to have one big plug for a
20 period of time. And that is how we are setup at this
21 stage, using external contractors.

22 There was mention of it before, there's a
23 right-of-way services RFP that is being prepared at the
24 moment. So such services will be done externally, and I
25 hope by small businesses as well, and will be done

1 externally whereas -- has to do most of those services
2 in-house.

3 MR. FELLENZ: I just wanted to add that
4 there's another agenda item coming up that is approval
5 for a right-of-way legal services contract as you know
6 and so that was with Caltrans. So we have reached out
7 just as a legal division, and they do have the resources
8 to provide that assistance that we think is at a good
9 price for High-Speed Rail Authority. So that's the
10 distinction between the right-of-way agent work versus
11 the legal work.

12 MR. RICHARDS: Thank you, Ms. Jones. Just
13 one quick comment with regard to both your current
14 consultant as well as the -- whoever move towards
15 selecting for the RFP. I would just strongly ask you to
16 consider that the professionals that -- whoever the
17 right-of-way agent happens to be -- that the
18 professionals have local experience in the areas where
19 the right-of-way that they're dealing with and those
20 property owners. I think it will provide for a faster
21 resolution in this process and I think more accurate
22 information. So it's -- probably is what you're already
23 thinking about, but I think it's really important to
24 basically use appraisers from the areas that the
25 right-of-way is going through, because I think they

1 really have the best --

2 MS. JONES: Thank you.

3 MS. SCHENK: Thank you. Any other questions
4 or comments to add?

5 I have the highest regard for Caltrans'
6 right-of-way acquisition experience. So everything that
7 we can do to call on them. This is going to be the
8 biggest project in California, and if we need them now
9 to figure out a way to get those resources from them,
10 and I can just wish you luck having been involved in the
11 Century Freeway, the 105. It looks like a great plan,
12 but it's always the unexpected that trips you up. So
13 Caltrans has that experience, and I urge you to be in
14 close touch with them on this.

15 Thank you, Tom. The next segment.

16 MR. FELLENZ: Hans van Winkle will be
17 presenting next.

18 MR. VAN WINKLE: Madame Chair and members of
19 the board, good morning. My task is to -- very briefly,
20 I have one slide -- to talk you through some very
21 technical and very complex issues.

22 Again, as Tom has mentioned earlier, we did have
23 a chance to talk to most of you and cover some of these
24 areas. So I'll just very briefly go over what we
25 believe to be some very critical points. Let me start

1 off by saying that this is our first Design-Build
2 contract going out. So we've taken it very seriously as
3 putting in the best effort. We want to make sure that
4 we get the first contract out that is a document, the
5 engineering, that technical aspects are done properly.

6 To that end, we've gone to many other partners in
7 designing this document and designing this system. In
8 particular, we have looked to Caltrans, who have begun a
9 Design-Build program as you know. It's in the early
10 stages, but we looked at their documents. We've also
11 gone out and looked at nationwide. There are many other
12 Design-Build contracts of this nature. So we use them
13 as a guide to help us formulate this particular
14 document.

15 I would tell you that in doing the engineering,
16 the technical, is a team effort by all of us. It's been
17 a priority for us. We've spent the last -- well, it's
18 been a little bit over a year that we've been putting
19 this document together. I'd like to publically
20 acknowledge Ken John, who's our senior engineer and one
21 of our deputy program managers, who has done the work in
22 putting all this together, thousands of pages of plans,
23 drawings, documents, and specifications. John, who is
24 our deputy program manager and responsible for
25 construction in the north and also for the initial

1 construction segments, and I've had dealings with him
2 directly, and also our commercial team. Teddy Vaughn
3 and Bryce Little, who have done a lot of the work
4 putting this together, and I just want to give thanks to
5 them.

6 In addition or our team, we have had a very able
7 group of regional contractors as you know, and
8 essentially, what we have done is our regional
9 contractors working on the ground, doing the 15 percent
10 design documents, environmental documents, have put out
11 the initial alignment. We call that the 15 percent
12 design.

13 Based on your decisions on a prepared alignment,
14 preferred alternative, we then take in that initial
15 design and further the design in a very specific area.
16 Here's where we expect problems. A -- footing a
17 structure of that nature and we advance that design so
18 that when we put it on a procurement document, then our
19 bidders, our potential contractors, our short-listed
20 firms, have a good notion of what it is they're going to
21 be bidding on and have sort of a head start in doing all
22 that.

23 So that's essentially the team of who produce the
24 technical documents. And again, this is pretty standard
25 and nothing particularly innate other than the fact of

1 the size and complexity of this project. And I also say
2 some of the technical specifications, we have to be much
3 more precise than in some other types of projects,
4 because again, we're going to be going along at 220
5 miles an hour. So many of the specifications have to be
6 very, very, very tight. So that adds to the complexity
7 of the project.

8 Let me state then, having produced those
9 documents, the technical documents, the drawings, our
10 team has provided design criteria manual, and then we
11 provided those in the RFP to the contractors. They will
12 then take those documents, do their own design, and we
13 should mention that the contractors do have a
14 responsibility under the Design-Build contract to meet
15 our performance standards and come up with an
16 appropriate design. I'll talk for just a moment about
17 our certification process and our quality control
18 process, but it is the responsibility of the contractor,
19 the successful bidder, to produce a design to meet our
20 performance specifications.

21 Now, I will say that there is some prime
22 responsibility that cannot be shifted to the
23 Design-Build contractors, and that's really the second
24 bullet, here, where you see that environmental
25 approvals. There are also permits that have to be

1 acquired, utility relocations, third party agreements,
2 all of those would be using our successful bidder's
3 assistance in producing those permits and documents, but
4 we retain ultimate responsibility to produce those, and
5 of course, the most important one is the environmental
6 approval process, which we're going through now. A
7 little later in the presentation today, you'll hear a
8 little bit more about our progress on Fresno,
9 Bakersfield, and in the coming board meetings, we'll be
10 presenting to you more information about the Merced,
11 Fresno piece, which we were moving very, very rapidly
12 toward achieving a very important NOD and ROD, which
13 again, is our responsibility for contractors.

14 I should mention also that all this technical
15 work, throughout, we have been keeping our federal
16 partners, FRA, informed, and there has been an exchange
17 of documents. They have reviewed all of our 15 percent
18 documents. And then the documents that have moved
19 forward have been provided to them, and we've had some
20 good technical discussions back and forth. So our
21 federal partners have been fully informed of what we're
22 doing.

23 I've mentioned already that in this process that
24 the winner of our potential Design-Build contractor does
25 have the responsibility for the design meeting

1 performance standards. That's very important. We're
2 very fortunate. We've got five firms now that are still
3 in the running that will receive this RFP. They are,
4 what I consider to be world-class firms. The
5 Design-Build process is designed to let them use their
6 best practices, their good engineering. We have done a
7 lot of preliminary work, but they will bring on
8 additional teams that will provide additional technical
9 expertise. So the Design-Build process really is
10 designed to allow them to use all of their best efforts,
11 their best technical knowledge, their best engineers,
12 and we will certainly be looking for that as we assist
13 the Authority in selecting the best Design-Build
14 contractor for us.

15 Now, in spite of having that responsibility, we,
16 of course, and the Authority have to maintain a good
17 quality control procedure. Now we have -- do have a
18 self-certification process. It's very important in the
19 Design-Build process that the contractor be allowed to
20 move forward without impediments. Of course, time, as
21 you know, is a constraint, and that's one of the
22 advantages of a Design-Build contract, but we will
23 maintain quality control, quality assurance systems.
24 Principally, we will have a self-certification process
25 and an independent checking engineer, which will be

1 checking all of the documents, that will be a sealed
2 document, a stamped document on each of the designs, and
3 that independent checking engineer will continue to
4 follow the Design-Build through the process.

5 In addition to that independent checking engineer
6 and quality control process, we will maintain an audit
7 responsibility within the Authority and our intent is to
8 have about a ten percent check on documents, drawings,
9 and progress. Should we -- should we determine that
10 there are some quality problems as we move forward in
11 either the design or the construction, then we have
12 mechanisms at our disposal to move in, and we can demand
13 additional quality control processes. We can take
14 additional steps, but we've been monitoring it very
15 closely.

16 The final point I'd make is that again, because
17 we do have these excellent firms, world-class firms, we
18 do want to take advantage of their knowledge, and early
19 on, we'll be using both alternative technical concepts
20 that we will be working closely with the firms
21 determining if, in fact, they have better ideas if we
22 accept those or not, and throughout the process, we will
23 certainly encourage valued engineering to include
24 cost-savings proposals throughout the process.

25 So overall, we feel very confident that we have a

1 good project to put out to our design builders. We'll
2 be working with them. They'll be submitting RFIs,
3 technical RFIs, as they proceed to produce their
4 estimate for us, and we're very confident that we're
5 going to have some excellent proposals, at the end of
6 the day, end up with an excellent design builder to help
7 us with the first stage of construction.

8 That ends my presentation, and I'll take any
9 questions that you have.

10 MS. SCHENK: Any questions? Comments? No.
11 I have one.

12 The FRA, would you just take a little deeper dive
13 on what their role is. How active -- or are they given
14 feedback that was in any way surprising or different
15 from what we had planned? What is their role in this?

16 MR. VAN WINKLE: Well, they have, in fact,
17 looked at each and every document we had. We've had a
18 considerable number of comments from them, and those
19 then are resolved at sort of the individual level. So
20 I'd say, we've have a good relationship. I don't
21 believe -- remember, the 15 percent design is sort of an
22 alignment. There's not a detailed design at this point.
23 So the principal purpose we want with that 15 percent is
24 get a good alignment. So there have been some questions
25 and comments on that before. I would characterize our

1 working relationship as very positive, very good. I
2 don't think there are any issues that have not been
3 resolved between the two of us. So I think in that
4 respect, we're in good shape.

5 MR. VAN ARK: And Madame Chair, I would like
6 to repeat as well, we have a very close working
7 relationship, and there's been nothing really surprising
8 that has come out of the review of all the
9 documentation. I mean, they have been very thorough and
10 critical and -- but there's nothing new that has come
11 up. We've just had to -- it's more like quality check,
12 quality control, and they do it very thoroughly, but
13 it's a day-to-day thing. People sometimes misunderstand
14 that we really have got a day-to-day working
15 relationship with the federal government, federal
16 administration.

17 And on the pure technical side, there's not that
18 much that they can help us on because, you know, we have
19 high-speed rail experts, which maybe they do not have as
20 many of, but they are on the procedural process. They
21 have been able to help us and make sure that we're going
22 to have the right oversight of the project.

23 MS. SCHENK: Thank you.

24 MR. FELLENZ: I just wanted to add to that,
25 that the FRA sent one of their attorneys out here to be

1 present during the RFQ process, where we shortlisted
2 from the five proposal firms. So they spent -- this
3 attorney spent several days with the RFQ evaluation team
4 in the subcommittees understanding what the process is
5 and overseeing the process as an observer and reported
6 back to FRA. So they were quite involved. They have
7 also been apart of the development of the RFP documents,
8 themselves, because we set them up on a site that they
9 can access, and we plug them in very early in the
10 process. So they have been continuing to give us
11 comments over months.

12 MS. SCHENK: Okay. Thank you. Good to
13 know.

14 MR. FELLENZ: I just wanted to continue with
15 just some legal contractual oversight, and as you know,
16 you have a lot of detail in the term sheets and all of
17 those individual items are covered in there. As
18 mentioned, Madame Chair, I did reach out with others at
19 the High-Speed Rail and consultants to inform you on
20 some of the details and answer your questions, and not
21 only was FRA involved and included in this whole
22 development of the RFP, Department of Finance at the
23 State level, was the Department of General Services and
24 the Attorney General's Office has been helping as well.

25 And I just wanted to mention that there was some

1 other consultants that have been quite involved other
2 than the team that Hans had mentioned, and that is the
3 financial group that we have as consultants has been
4 part of the RFP process the entire time and the RFQ
5 process, and in addition to that, the law firm has
6 provided quite a bit of expert advice and has been very
7 involved. So we've had a large team, lots and lots of
8 hours developing this really important document.

9 The RFP follows the Design-Build Institute of
10 America process. We have also reached out to Caltrans
11 because of their experience. Although they have really
12 a long history of design bid build, they have received
13 the authority under statute to do Design-Build a few
14 years ago. So they had developed the Design-Build
15 program starting from scratch, and so we have taken
16 advantage. I happen to have some contacts over there in
17 the lead division, also the project manager for the
18 Design-Build program, and so we have had a number of
19 occasions to consult with them. So that has been very
20 helpful.

21 I wanted to mention that, again, the Public Works
22 Board has to approve this RFP as well as this board, and
23 just to let you know, the Public Works Board staff
24 consists of Department of General Services and
25 Department of Finance, and so they are very familiar

1 with and they have experience in Design-Build, and so
2 they have been plugged in for months on this process and
3 given us a lot of feedback.

4 I want to talk about the best value selection
5 process that we're moving forward with. It's for the
6 selection of the proposal meeting that will move on to
7 award --

8 MS. SCHENK: I'm sorry. Going back to the
9 legal --

10 MR. FELLENZ: Oh, yes.

11 MS. SCHENK: -- for a moment. Sorry. Just
12 had a little sidebar here. It's amazing with all the
13 lawyers that we got this done.

14 MR. FELLENZ: Yes, I know.

15 MS. SCHENK: So you are the lead attorney
16 for us on all this in coordinating all the --

17 MR. FELLENZ: Yes.

18 MS. SCHENK: And it all comes back to you?

19 MR. FELLENZ: Right. Yes.

20 MS. SCHENK: Okay. Because I want to know
21 who to blame.

22 MR. FELLENZ: Yes, it does. I have been
23 very actively involved with all the consultant groups
24 that I mentioned, the PMT, PMO, KPMG --

25 MS. SCHENK: The whole alphabet.

1 MR. FELLENZ: Everybody, yeah. So I have
2 been trying to coordinate that -- or have been
3 coordinating that. So it's been quite a big effort.

4 MS. SCHENK: Okay.

5 MR. FELLENZ: There's many, many conference
6 calls and face-to-face meetings. It's been -- it's
7 very, very intense to try to put something this complex
8 together.

9 MS. SCHENK: Well, you must be doing
10 something right with all the lawyers on this board and
11 there's no questions. So please move on.

12 MR. FELLENZ: The selection process for the
13 best value -- or proposal is going to be a best value
14 selection and it's a technical and price component, and
15 we had a lot of internal discussion on what the best way
16 to approach this is so that we end up with a strong
17 technical proposal team as well as a very fair and
18 competitive price. So we looked to the federal
19 acquisition regulations and followed those, and we
20 looked at also examples of technical price waiting for
21 Design-Build contractors selection for other types of
22 projects throughout the United States.

23 And so we settled on this approach. We're going
24 to have -- there are five proposal teams, and we hope,
25 are confident, that there will be five proposals

1 submitted, and so the first evaluation process will be
2 to go through and have technical evaluation. These are
3 the weightings that we'll put on the various subject
4 areas that we'll be looking at, project approach,
5 safety, exceptional engineering, ability to meet the
6 schedule, anticipated problems and solutions, and
7 quality of self-certification. And you can see the
8 representative weightings that they have.

9 These are broad categories, and within them,
10 there are other categories. So for instance, you don't
11 see, here, the small business program because that's
12 going to be part of the project approach. So there are
13 many subcategories within these major categories. When
14 the technical evaluation in the Design-Build procurement
15 is done, usually there are very broad categories like
16 this. We're going to have this first approach, we're
17 going to rate them, and we're going to take the top
18 three out of the five to move onto the next part of the
19 competition for selection.

20 If we have only four proposals, we -- again,
21 we'll just go with the top three. If we had two
22 proposals -- or pardon me, three proposals, we'll just
23 select the top two to move onto the next price
24 component. Okay. So that's -- we narrow the field to
25 the top three, and then we move onto the top two

1 technical if there's only three.

2 And then we move onto what's called the price
3 consideration, although, it actually folds back into
4 technical proposals we received, but now we only weight
5 it at thirty percent and the price component is a full
6 seventy percent. So the same five -- or no, six
7 categories are in the technical proposal piece. That's
8 thirty percent. By creating the competition for the
9 technical piece, we think we're going to get strong
10 technical proposals, and we're going to get some very
11 well thought out plans from these proposal teams. And
12 we're making it very competitive, because, you know, if
13 you are not in the top three, you'll be dropped off.
14 And then we move to the price, and because it's more
15 heavily weighted in price than in second phase, we think
16 we'll get some good competition and get a very fair and
17 reasonable price.

18 And as I mentioned before, we looked at other
19 projects throughout the United States and the
20 Design-Build Institute. We are following principals in
21 that manual. There's a quote there that shows one type
22 of procurement approach that could be taken. Although,
23 ours will be a little different than that, but we look
24 into the Design-Build institute for guidance, and then
25 also we looked at these particular projects as good

1 examples. This is a Caltrans Design-Build program where
2 for their largest Design-Build project, which is the
3 Gerald Desmond Bridge, they had this scoring plan, which
4 was seventy to eighty percent price and twenty to thirty
5 percent technical, and that project was about \$700
6 million. And Denver's RTD, Denver Eagle P3 rail
7 project, had a price and technical split as you see,
8 between sixty and forty. And then finally, Dallas Area
9 Rapid Transit Orange Line had a 35 point price and 65
10 point technical.

11 So you can see there are many variations that you
12 could select, but we chose this method, because we
13 thought we would accomplish the goals of the Authority
14 best.

15 I want to move on to stipends.

16 MS. SCHENK: Well, are there any questions
17 or comments I'll take at this point? Yes.

18 MR. HARTNETT: As to the ability to evaluate
19 the proposals that are -- I know that you and I talked
20 about that but can you provide us with a little more
21 detail how -- who's involved in the evaluation process
22 and how that works.

23 MR. FELLENZ: Okay. This is similar to the
24 RFQ evaluation process that we just went through, and it
25 will mimic it except it will be much more time

1 commitment. When you evaluate these proposals in the
2 state system, there has to be state employees that are
3 part of evaluation team that make the final decisions on
4 the scoring. So we're going to reach out to other
5 public entities and also use High-Speed Rail staff.

6 What I did for the RFQ process is I reached out
7 to other transportation agencies. I had Caltrans
8 participate. I had Contra Costa County of
9 Transportation Authority participate. There was someone
10 from the Department of General Services because they are
11 overseeing our whole procurement process and must report
12 to the Public Works Board. DOF was involved in it, and
13 also I had High-Speed Rail staff from the engineering
14 side and from the finance side.

15 We then had -- this was a five-member evaluation
16 team, and that's what we wanted to have for this RFP.
17 Feeding into and helping and assisting this five-person
18 evaluation team, we're going to have subcommittees with
19 areas of specialty. For instance, we'll have a small
20 business group consisting of consultants and High-Speed
21 Rail staff who are working on this small business
22 program, and then we're also going to have some
23 engineering that will consists of consultants, and the
24 last we had some assistance from Caltrans engineers.
25 Then we also had a legal group that provided legal

1 advice, and we reached out to the law firm, which is
2 world renown for their expertise in the legal area.

3 And so we have these committees that do the work
4 for the evaluation committee, and they have the specific
5 tasks that they're supposed to do in the evaluation
6 process. For instance, in the RFQ, there is a pass/fail
7 component, and we had a pass/fail subcommittee. And
8 then they made a recommendation on the pass/fail to the
9 evaluation committee itself, and then they adopt or
10 modify that recommendation.

11 Ultimately, when you get to the decision point on
12 making a selection, we would go to the CEO for approval
13 and then to you, as the board.

14 MS. SCHENK: any other comments up to this
15 point? No.

16 Okay. You can move on to the other then.

17 MR. FELLENZ: Okay. The stipends, the
18 purpose of stipends is to defray engineering and other
19 costs in return for the submission of the response of
20 the proposal. And we're proposing to the Authority to
21 pay up to \$2 million per proposal that is not selected
22 for award. If for some reason the award is cancelled,
23 then it would be for all proposals that we'd be
24 submitted. But we have some criteria that we're going
25 to use as benchmarks in order to pay the stipend. First

1 of all, it has to be an acceptable proposal, and we'll
2 have some rigid requirements as to what would be that
3 acceptable standard.

4 And then we also have to receive proof that
5 they -- in fact, that they incurred those types of
6 costs. We looked at industry standards, and we see that
7 stipends fall between .1 and .2 percent range in the
8 estimated contract value. It's the industry standard.
9 So the \$2 million per stipend is within that range, and
10 from reaching out to the industry, we have understanding
11 that there could be an expense up to \$6 million per
12 proposal for this type of procurement. So this is a
13 partial reimbursement for the expenses that the
14 Design-Build teams have gone through, but another
15 important aspect of this is that the Authority is
16 actually acquiring the full proposals that are
17 submitted, and they can use those proposals for any
18 purpose that they have.

19 So for instance, they can be used -- if it is a
20 non-successful proposal, it can be used and shared with
21 the successful proposers for innovative ideas that may
22 be contained in there, and could be used for future
23 procurements. I know I had a number of those, as I
24 mentioned, in the Central Valley. So there's a great --
25 these proposals are of nice -- good value to the

1 High-Speed Rail Authority and that's why we're prosing
2 that we do this.

3 MR. VAN ARK: And I would just like to add,
4 if I may, Madame Chair, that it's quite normal in the
5 state system. I mean, Caltrans used stipends very
6 similar already to this to the same magnitude also
7 Design-Build bids. So it's not an abnormal thing, and
8 you must understand that present conditions on
9 high-speed rail, this is a necessity to ensure that we
10 are going to obtain a maximum competitiveness on the
11 spirit. I think we can get those groups. We've got two
12 bids on this particular project. So I really recommend
13 that the board look favorably upon this request.

14 MS. SCHENK: Any other questions or
15 comments? Yes, Mr. Richards.

16 MR. RICHARDS: Thank you. So with regards
17 to the determination of how much the proposer gets on
18 the stipend, Tom, it will be, I assume, then up to that
19 proposer to prove their hard costs to -- at least to the
20 \$2 million level?

21 MR. FELLENZ: Correct. Correct.

22 MR. RICHARDS: Thank you. Thank you.

23 MS. SCHENK: Are there any other -- sorry.
24 Mr. Balgenorth.

25 MR. BALGENORTH: Only to the \$2 million

1 level?

2 MR. FELLENZ: Only to the \$2 million level.

3 Yeah, that's the maximum extent, and it would be less
4 than that if they can prove -- if they prove less or if
5 we got a partial proposal, for instance, we would have
6 to audit the information that they would provide to see
7 what the appropriate amount will be.

8 MR. BALGENORTH: I was just thinking,
9 wouldn't you be better to have something where they get
10 a percentage? If it's going to cost people \$6 million
11 to do this, then we're going to reimburse them two.
12 Then I can see that there's -- you know, that there's a
13 reason to do that. But if a person only spent two, I
14 don't -- doesn't look like they have any risk. It looks
15 like what they could do is just go out and keep their
16 people working with no downside as long as they didn't
17 exceed it. It just seems like there should be a
18 percentage.

19 MR. FELLENZ: Well, we look at the entire
20 proposal. The proposal has to be complete and
21 acceptable. So there we have standards that we look at
22 to determine whether the proposal is warranted to
23 receive the stipend. So there's that test, and then we
24 also have the test to show what exactly they spent for
25 it.

1 MR. VAN ARK: So if a bid comes in of an
2 inferior quality, the bidder does not get 2 million.
3 They have to prove the two million in costs, but the
4 quality of the bid has to be such that it warrants the
5 payment.

6 MR. BALGENORTH: All right. That makes me
7 more comfortable.

8 MS. SCHENK: Any more questions or comments?
9 Tom?

10 MR. UMBERG: And with respect to the
11 evaluation, as to the appropriateness of the bid, that's
12 the evaluation committee or is that a different decision
13 making body that makes that determination as to the
14 appropriate level of stipend?

15 MR. FELLENZ: That would be a different
16 committee that we would have look at that.

17 MR. UMBERG: It would be what? I'm sorry.

18 MR. FELLENZ: A different, a different.

19 MR. UMBERG: A different group.

20 MR. FELLENZ: And it would be -- High-Speed
21 Rail staff would be involved. We'd maybe seek
22 assistance from consultants, but it really would be a
23 state staff decision on that.

24 MR. UMBERG: Okay. Thank you.

25 MS. SCHENK: All right. Does that

1 conclude -- or you have one more. Okay.

2 MR. FELLENZ: Okay. Well, we do have a
3 resolution that we're asking you to consider, and let me
4 just kind of go through the points here.

5 The first would be to approve the RFP for
6 construction page one, number one, based on the term
7 sheet provisions that you have been provided. And then
8 this, I haven't discussed before, we also are asking
9 that the High-Speed Rail CEO can make some
10 non-substantive changes to the term sheet provisions in
11 consultation with the Board Chair. We wanted to leave
12 in an opportunity to make what, we determine to be a
13 non-substantive changes, so that we don't have to
14 continue to come to the board every time some change is
15 made, because as Mr. Van Winkle indicated, he said, it's
16 a large, voluminous document, and there will be
17 adjustments along the way. There will be addendums,
18 most likely, issued as appropriate along this whole
19 procurement process.

20 And then we're asking for approval of stipends up
21 to \$2 million for acceptable proposal for the proposal
22 teams not awarded a contract or if the contract is
23 cancelled prior to award.

24 And then finally, we're asking approval for the
25 three step RFP evaluation criteria that I have

1 described.

2 MS. SCHENK: So does that conclude your
3 presentation?

4 MR. FELLENZ: Yes, it does.

5 MS. SCHENK: Any additional questions or
6 comments?

7 Well, a couple, as I said before we got started,
8 each one of us were able to review and study the term
9 sheet and make some comments. One that may seem small
10 that I overlooked but is big in terms of the members of
11 this authority, under indemnity, we say that the
12 contractor will fully defend, indemnify all parties to
13 the authority and all of its directors, officers, et
14 cetera. As I recall, we in the statute are referred to
15 as "members" not "directors." So if you could take a
16 look at that.

17 MR. FELLENZ: Sure.

18 MS. SCHENK: And if that is the way -- we
19 want to make sure we protect ourselves, too.

20 MR. FELLENZ: Absolutely, sure.

21 MS. SCHENK: In other words, kind of looking
22 at the big picture; didn't look at the small.

23 From -- and I know we have brought this up before
24 but just a little bit more on the timeline, which seems
25 ambitious to me, you know, from the RFP to the

1 right-of-way to completing. This looks like a pretty
2 robust timeline.

3 So I'd like to, I guess, hear from Roelof, you
4 too, because you have been involved in this and, Tom,
5 you're comfort level with our being able to meet this
6 timeline knowing that they're going to be unknowns down
7 the road here.

8 MR. FELLENZ: I certainly won't represent
9 that it will be easy to accomplish. What we have done
10 through the Design-Build procurement, though, is we
11 believe we have -- are shifting a lot of those risks to
12 the contractor or the design builder as appropriate in
13 the Design-Build procurement. For instance, utilities
14 and hazardous waste as many of the things that
15 High-Speed Rail Authority, if it was a design bid build,
16 like retaining those risks were shifting over because
17 they are the designers, Design-Build firms, and they
18 will have to manage those risks themselves.

19 So we have had the one-on-ones with the
20 Design-Build teams and they believe they can -- and have
21 represented that they can stay within the schedules as
22 represented in the term sheets. We have -- or are
23 planning on the award at the end of 2012. So that would
24 be probably December of 2012. They will be performing
25 the design part of this procurement probably until the

1 summer of 2013. We're giving them a thirty percent
2 design, and as you can see in the term sheet, they can
3 accept that design. We're not retaining any risks
4 associated with those designs if they have mistakes or
5 problems. They can use them as they see fit or start
6 over. They, obviously, will use them. Then they take
7 it from thirty to one hundred percent design, and then
8 they can start their construction phase.

9 However, because of it's design-build they have
10 the opportunity to start constructing before they
11 actually reach a hundred percent design and probably
12 will likely do so to gain some time.

13 So they can design one portion. Let's say they
14 start in the north. They can design one portion, and
15 they can start construction following that while they're
16 designing in the south direction, and that's an
17 advantage in Design-Build where they have all those
18 risks. If an owner were to procure it in that manner,
19 they would have a higher risk, because they retain the
20 design risks.

21 They'll be working on this project for a 36-month
22 period. That's the time that they are allowed, and as
23 you know, we have put it down just following that, but
24 the completion date would be in mid-2016. And as you
25 know, the tariff funds have termination dates, and we

1 have about one year between the time of completion under
2 this contract and the end of our opportunity to acquire
3 those tariff funds to seek reimbursement from the
4 federal government. So there is that time available
5 there if they were to run over during that time, there
6 are some -- costs associated with those delays would be
7 paid.

8 So there are tight timelines, but there is some
9 opportunity because of the additional year before
10 termination of the tariff funds, where we think that
11 gives us some comfort.

12 MS. SCHENK: Okay.

13 MR. VAN ARK: It is a tight schedule. On
14 the other hand, you know, that we have constantly said
15 to you, the board, and to the public that we need to
16 continue to march on and stick to this timeline. That's
17 why we want to go on with this RFP, and that's why we
18 believe we need to stick to this and get the contract in
19 place by the end of 2012. That's been what we have
20 promised the board and the people for a long time, and
21 as Tom Fellenz has just indicated to you, that the
22 way -- and he spoke to all five pre-qualified bidders --
23 they believe the 36 months is what they need to do this
24 work, and that leaves us another additional 12 months
25 beyond that before we actually run into the difficult

1 time of meeting the tariff funding requirements. Don't
2 forget we also still have FY10 funding, which is not
3 directly linked to the 2017 due date or day of usage.
4 So we want to use that in particular on the track work,
5 which is the last package. The fifth of the five
6 packages.

7 But we cannot give up any momentum. I mean,
8 right-of-way acquisition is very important. That's why
9 we chose to have Patricia present that to you. We have
10 to continue on this timeline, because this can be done.
11 Don't forget in ten years, the Chinese have brought
12 about six thousand miles of high-speed rail line
13 complete, and I know we often say, "We don't want do it
14 the Chinese way," but it's just an indication of what
15 physically, what can be done. You know, physically,
16 this can be done. And the contractors have confirmed
17 with us as well that physically, the 36 months can be
18 achieved. They can do it. That's what we are basing
19 our work on as well. I think it's possible, and we want
20 to continue to make an effort.

21 MS. SCHENK: Well, I hope you're right.

22 MR. FELLENZ: In the evaluation process, as
23 you saw in the technical weighting, we do schedule
24 certainty as one of the components that were used to
25 evaluate the proposers, but we want to see a very

1 realistic and aggressive schedule. One of the proposer
2 teams indicated to us that they think they can
3 accomplish it in less than 36 months. So we're counting
4 on their innovative thought and approach, and we're
5 hopeful.

6 There's also additional contracts coming out. So
7 the performance by -- in this contract could be
8 beneficial for the High-Speed Rail Authority in learning
9 how we might streamline other contracts that are
10 following this one. That will be a benefit, and I think
11 the industry may learn from that, too and maybe make it
12 better and accurate and timely for packages two through
13 five.

14 MS. SCHENK: And all of this is in one
15 resolution? You're --

16 MR. FELLENZ: Yes.

17 MS. SCHENK: And you feel comfortable that
18 the stipend can be included in the resolution?

19 MR. FELLENZ: Yes.

20 MS. SCHENK: Okay. So the way we're going
21 to proceed on this with -- Mr. Umberg has asked that we
22 delay the vote for -- well, for just some period of
23 time. We'll do the vote today before the end of the
24 session but not right now.

25 And what we'll do is some -- let's see. We have

1 a request for public comment, and usually, the green
2 slip has to be in by a time certain to speak on an item,
3 but I don't think that was announced by the Chair today.
4 So I will allow this Mr. Richard -- is it Tomash?
5 Tolmach?

6 And if I could just say ladies and gentlemen,
7 if -- when you fill out these forms in the future,
8 please print so that the Chair or whoever is sitting in
9 the Chair can read the name without embarrassment. All
10 right. Mr. Tolmach.

11 MR. TOLMACH: Sorry for my handwriting. I'm
12 Richard Tolmach, president of California Rail
13 Foundation.

14 I wanted to compliment staff for including in the
15 process a means of capturing at least half of the
16 savings from value engineering. That's an important
17 feature. I think it's a good thing to look into how
18 much you can save and perhaps make that a critical
19 factor again in the award of the contract.

20 Having said that, I'm afraid, like
21 Mr. Balgenorth, that the stipend is a little bit
22 generous for this particular piece of work. I don't
23 know if you remember the Texas High-Speed Rail Project
24 did do a similar stipend, and I think it was two million
25 for the entire Texas proposal. So maybe costs have

1 gotten out of control since then, but it seems a little
2 bit rich to me.

3 What my main concern is about this process is
4 that bidder groups already exclude most of the worldwide
5 talent. There's no French company, there's no German
6 company, there's no Japanese company associated with any
7 of those five groups. I have great concerns that the
8 remaining groups that are actually capable of doing a
9 world standards line and the insiders still dominate the
10 process. You know, the same club is in control, and I
11 think this is the thing we have to worry about.

12 Recently the Beijing Times talks about the
13 problems that led to this -- their system of corruption
14 there. And they say -- here's a quote: "Although the
15 system is intended to ensure quality and safety, it has
16 become a tool for corruption where small, unknown
17 companies easily pass certification tests, while
18 experienced and reputable companies have been denied
19 with no reasonable explanation. 'The open bid program
20 is a facade,' said Beijing Times, 'There are certain
21 companies without the western tools of technical
22 capacities enabling them to conclude on which
23 competitors are excluded from the market.'"

24 I feel that this has happened in our project, and
25 I think it's the thing we have to be most worried about.

1 MS. SCHENK: Thank you for your comments.

2 Okay. So I think what we'll do --

3 MR. UMBERG: We don't want to do anything
4 without our lawyer present.

5 MS. SCHENK: Here he is. All right. So now
6 we're at the point where we're ready for a motion on the
7 resolution.

8 MR. HARTNETT: I move we adopt the
9 resolution as submitted.

10 MR. RICHARDS: Second.

11 MS. SCHENK: Are there any additional
12 comments? Hearing none, we're ready to -- you look
13 puzzled, Mr. Fellenz, is there something that you'd like
14 to say?

15 MR. UMBERG: I'm sorry. No.

16 MR. FELLENZ: No.

17 MS. SCHENK: All right. We're good. Will
18 the secretary call the roll, please.

19 MS. MOORE: Mr. Richards

20 MR. RICHARDS: Yes.

21 MS. MOORE: Ms. Schenk.

22 MS. SCHENK: Yes.

23 MS. MOORE: Mr. Balgenorth.

24 MR. BALGENORTH: Yes.

25 MS. MOORE: Mr. Burns.

1 MR. BURNS: I'm going to abstain.

2 MS. MOORE: Mr. Hartnett.

3 MR. HARTNETT: Yes.

4 MS. MOORE: Mr. Umberg.

5 MR. UMBERG: Aye.

6 MS. SCHENK: Okay. So I think we can resume
7 and call our Chair back into the room.

8 Okay. He's on his way. Well, why don't we
9 continue until he comes in. Next item is the Item
10 Number 4.

11 MR. FELLENZ: Item Number 4 is a request for
12 the board to adopt a policy on subcontractor
13 identification for Design-Build contracts. To prevent
14 prime contractors from using a subcontractor's bid, to
15 prepare his bid and then shop that bid to get a lower
16 price, the California subcontractors ask for -- requires
17 bidders for public contractors to list the names of all
18 subcontractors who will perform the work in the amount
19 in excess of one half of one percent of the prime
20 contractor's bid.

21 Since Design-Build contract will require the
22 contractor to furnish the design of the project,
23 complete specifications will not be available prior to
24 the submission of the proposals. So it's, therefore,
25 impossible for the contractors to obtain firm bids from

1 subcontractors prior to the submission of the
2 contractor's bid. So that -- so to enable the prime
3 contractor to identify the subcontractors at time of
4 proposal submission in accordance with the
5 Subcontracting Act.

6 In addition, the scope of the construction work
7 to be performed pursuant to each proposed Design-Build
8 contract is so large that it will not be possible for
9 the prime contractor to perform all the work in-house.
10 So they have to use subcontractors.

11 So -- with subcontracting law, though, does
12 provide an exemption opportunity to prevent public
13 agencies to allow contractors to work subcontracts
14 post-award upon a finding of public necessity. So for
15 all these reasons that we're asking the board to find
16 that public necessity to adopt the policy that's laid
17 out in the resolution.

18 CHAIRMAN RICHARD: Okay.

19 MR. UMBERG: I have a question.

20 CHAIRMAN RICHARD: I'm sorry. I have a
21 question on this. If I might just -- were there any
22 other questions from members on this item?

23 My question was just on -- in the staff material
24 it says, such procedure shall include times for each
25 step of the process. It shall provide an award of any

1 subcontractor, blah, blah, blah. Who is going to be
2 monitoring compliance with all of this?

3 MR. FELLENZ: The High-Speed Rail,
4 High-Speed Rail Authority staff.

5 CHAIRMAN RICHARD: The staff?

6 MR. FELLENZ: Yes.

7 CHAIRMAN RICHARD: And do we have a
8 particular person whose job that is, or will it be under
9 your offices?

10 MR. FELLENZ: Yes, it will be.

11 CHAIRMAN RICHARD: Okay.

12 MR. FELLENZ: Yes.

13 CHAIRMAN RICHARD: Okay. That was my own
14 issue. I'm sorry. No other questions?

15 MR. FELLENZ: I have one more request for a
16 slight modification to the language in the resolution.

17 CHAIRMAN RICHARD: All right.

18 MR. FELLENZ: That I think will make it more
19 clear. And it says, "The board hereby resolves as
20 follows:" If you go to Part B, just before the colon,
21 to add the words "not identified in the proposal." So
22 it would be, "The following procedures hereby adopted by
23 the board and shall be adhered to by the prime
24 contractor under each Design-Build contract in selecting
25 a subcontractor not identified in the proposal:" So I

1 would like to add those words, and I think it will be
2 more clear --

3 CHAIRMAN RICHARD: I'm sorry. So at the top
4 where it says, "The following procedure is hereby
5 adopted by the board."

6 MR. FELLENZ: Yes.

7 CHAIRMAN RICHARD: And then would you repeat
8 again what you want to add.

9 MR. FELLENZ: Sure. The first sentence in
10 Part B then before the colon says, "The following
11 procedure is hereby adopted by the board and shall be
12 adhered to by the prime contractor under each
13 Design-Build contract in selecting its subcontractors
14 not identified in the proposal."

15 CHAIRMAN RICHARD: I got it. Okay. All
16 right. Mr. Umberg, does that change your motion?

17 MR. UMBERG: I move as amended.

18 CHAIRMAN RICHARD: Okay.

19 MS. SCHENK: Second.

20 CHAIRMAN RICHARD: It's been moved by
21 Mr. Umberg, seconded by Vice-Chair Schenk. Please --
22 I'm sorry. Mr. Hartnett, do you have a question?

23 Okay. Please call the role.

24 MS. MOORE: Mr. Richards.

25 MR. RICHARDS: Yes.

1 MS. MOORE: Ms. Schenk.

2 MS. SCHENK: Yes.

3 MS. MOORE: Mr. Balgenorth.

4 MR. BALGENORTH: Yes.

5 MS. MOORE: Mr. Burns.

6 MR. BURNS: Yes.

7 MS. MOORE: Mr. Hartnett.

8 MR. HARTNETT: Yes.

9 MS. MOORE: Mr. Umberg.

10 MR. UMBERG: Aye

11 CHAIRMAN RICHARD: Aye.

12 All right. Item 5.

13 MS. JONES: Good morning, Chairman Richard
14 and members of the board and Mr. Van Ark. I'm Patricia
15 Jones, and I'm here to present Action Item Number 5
16 related to agreements between the Authority and other
17 State and local agencies.

18 The Authority recognizes our need to address our
19 project's impacts on other public agency resources as
20 well as the need to utilize public resources in the most
21 proficient manner, to help adhere meeting project
22 schedules, and reduce potential for repetitive costs.

23 Existing statutes provide the Authority with the
24 ability to enter into agreements with other State
25 agencies and local public agencies. The agreements

1 under consideration will assist the Authority with
2 advancing board construction by providing the necessary
3 temporary resources to -- let's see. I think we're
4 here. Yes. Thank you -- the necessary temporary
5 resources to ensure timely responses to regulatory
6 agencies such as for permit processing, request for
7 information from planning departments, or establishing
8 special teams, task forces, or specific assignments to
9 address the spike in demand for specific services.

10 These agreements may provide local government
11 resources needed to assist our constituencies with
12 business retention or prosing of required permits.
13 Whether they may provide local or State agencies with
14 resources to assist in expediting specific right-of-way
15 activities such as acquisition, relocation, assistance
16 and/or utility relocation planning. They may also
17 provide these agencies with resources to perform
18 specific activities related to design or construction
19 such as utility relocation implementation or addressing
20 impacts to state and local street, roads, and/or
21 facilities. They may also provide State and local
22 agencies resources for mitigation measures on behalf of
23 the Authority such as noise mitigation, screening, or
24 traffic flow improvements.

25 The staff has submitted a briefing document and

1 resolution number HSR12-05 for the board's review and
2 consideration with the recommendation that the board
3 pass the resolution, which authorizes the Chief
4 Executive Officer or his designee to undertake all that
5 is necessary to prepare and execute one or more
6 cooperative or interagency agreements with cities,
7 counties, and/or State agencies up to an amount not to
8 exceed \$5 million each for purposes of advancing the
9 project towards construction.

10 That concludes the information to present, and I
11 may address any questions.

12 CHAIRMAN RICHARD: Okay. I have one. I
13 have one item, but any questions from members?

14 All right. I have one rather significant
15 modification I'd like to propose to the resolution.
16 Under the resolved -- therefore be resolved. The
17 High-Speed Rail Board authorizes the Chief Executive
18 Officer for his or her designation.

19 MS. SCHENK: Thank you.

20 CHAIRMAN RICHARD: I'm not being
21 presumptuous here. But so with that --

22 MR. RICHARDS: With that modification, I
23 would move for the approval, Mr. Chairman.

24 MR. HARTNETT: Second.

25 CHAIRMAN RICHARD: All right. Moved by

1 Director Richards and seconded Members Hartnett and
2 Vice-Chair Schenk.

3 Would you call the role, please.

4 MS. MOORE: Mr. Richards.

5 MR. RICHARDS: Yes.

6 MS. MOORE: Ms. Schenk.

7 MS. SCHENK: Yes.

8 MS. MOORE: Mr. Balgenorth.

9 Mr. Burns.

10 MR. BURNS: Yes

11 MS. MOORE: Mr. Hartnett

12 MR. HARTNETT: Yes.

13 MS. MOORE: Mr. Umberg.

14 MR. UMBERG: Yes.

15 MS. MOORE: Chairman Richard.

16 CHAIRMAN RICHARD: Yes.

17 Thank you. Let's see if we can get Item 5 -- or
18 excuse me. Item 6 before we take a lunch break.

19 MR. FELLENZ: Chairman Richard and board
20 members, this next item is a request for approval to
21 enter into an interagency agreement with Caltrans for
22 legal services for right-of-way.

23 The High-Speed Rail Authority will be acquiring
24 right-of-way in the Central Valley for the initial
25 construction section and legal services will be needed

1 to provide legal advice and litigation support for the
2 property acquisitions, and the State of California
3 Caltrans has indicated that it can provide these
4 services through an interagency agreement to which the
5 Authority will reimburse Caltrans for the actual costs.

6 We have a draft interagency agreement that we
7 have been working with Caltrans. It's over a three-year
8 period, and the budget or estimate for that is \$7.3
9 million. It reflects the use of three attorneys and one
10 secretary in the year 2012, and that estimate is about
11 \$900,000. There are six attorneys, a half of a
12 paralegal, one and a half secretary in 2013, and that's
13 \$2.1 million. 2013 and 2014 is six attorneys, a half a
14 paralegal, and one and a half secretaries for \$3.1
15 million. Those three estimates, the budget, and the
16 total is a \$7.3 million estimate, and it's based on the
17 hourly rate that Caltrans charges for those attorneys,
18 secretaries, and paralegals.

19 So it's State employee compensation rate, which
20 is a very reasonable rate compared to the cost if you
21 went out to a private law firm, and again, these are
22 just estimates. It's hard for us to identify exactly
23 how many legal services -- the amount of legal services
24 that may be required, but asked Caltrans has to give us
25 these estimates based on their experience, knowing the

1 number of parcels that are to be acquired in the Central
2 Valley, which are about 1100. So they base it on their
3 experience and best knowledge.

4 So that's how we came up with that estimate. So
5 we're just asking you to enter into an interagency
6 agreement for approval for this amount.

7 CHAIRMAN RICHARD: Okay. Thank you,
8 Mr. Fellenz.

9 Questions from members? Mr. Umberg.

10 MR. UMBERG: So based on whatever
11 experience -- can this be -- because it seems to me one
12 paralegal to six attorneys, that ratio seems out of
13 wack.

14 MR. FELLENZ: That's what Caltrans proposed
15 because that's the personnel makeup that they have. So
16 they don't have -- in Caltrans, they don't have a large
17 number of paralegals. They only have a limited number
18 of PYs.

19 MR. UMBERG: My question is so after we have
20 six months of experience and we see that we either need
21 more paralegals or that we can actually be more
22 efficient using paralegals versus attorneys, is there an
23 ability to modify that?

24 MR. FELLENZ: Certainly, that's something we
25 can discuss withal Caltrans, yes. Yes. Having worked

1 at Caltrans and seen the imminent domain process, the
2 paralegals and the secretaries are used to prepare the
3 court papers, and that's one of their main functions.
4 Then to assist the attorneys along through the process
5 for work property acquisition, but that's why those
6 ratios are used, because that's their current makeup.

7 MR. UMBERG: That's what they have as
8 opposed to what they think they need.

9 MR. FELLENZ: Yes.

10 MR. UMBERG: Okay.

11 CHAIRMAN RICHARD: Okay. Other questions?
12 Motion?

13 MR. UMBERG: Motion.

14 MS. SCHENK: Second.

15 CHAIRMAN RICHARD: Okay. Moved by Director
16 Umberg and seconded by Vice-Chair Schenk.

17 Please call the role.

18 MS. MOORE: Mr. Richards.

19 MR. RICHARDS: Yes.

20 MS. MOORE: Ms. Schenk.

21 MS. SCHENK: Yes.

22 MS. MOORE: Mr. Balgenorth.

23 MR. BALGENORTH: Yes.

24 MS. MOORE: Mr. Burns.

25 MR. BURNS: Yes.

1 MS. MOORE: Mr. Hartnett.

2 MR. HARTNETT: Yes.

3 MS. MOORE: Mr. Umberg.

4 MR. UMBERG: Yes.

5 MS. MOORE: Chairman Richard.

6 CHAIRMAN RICHARD: Yes. Okay. Thank you.

7 MR. FELLENZ: I just want to make one more
8 comment. This is the last item I'll be reporting on, so
9 I just wanted to say on behalf of myself and staff, a
10 special thanks you to Roelof van Ark for his leadership.
11 He's just set a standard of excellence at the High-Speed
12 Rail Authority. When you work with him every day, you
13 just realize how accomplished he is and knowledgeable
14 and how he really guides us to doing the right
15 solutions.

16 So you know, it's been a complete pleasure
17 working with you, and I know that you always say, "Is
18 this professional?" You're always asking that question,
19 and that's because that's the way you live your career,
20 in a very professional manner. So I just want to thank
21 you personally and on behalf of all the staff, we're
22 going to really miss you.

23 CHAIRMAN RICHARD: Thank you, Mr. Fellenz.
24 That was very well stated and very appropriate.

25 At this point, we will take a lunch break from

1 the public meeting and -- yes, and the board will enter
2 into a closed session on matters specified in the agenda
3 briefing and we should return -- well, probably within
4 about an hour to ninety minutes. Okay.

5

6 (Closed session followed by lunch break.)

7

8 CHAIRMAN RICHARD: Okay. Good afternoon.
9 I'm sorry we went a little long on that. We'll be back
10 in order.

11 The board did meet in closed session, and there
12 is no actions to report from that closed session.

13 So picking up on the agenda, we will now take up
14 Item 7, which is the proposed Memorandum of
15 Understanding, Southern California governmental
16 entities. Mr. Van Ark.

17 MR. VAN ARK: Mr. Chairman, members, Item
18 Number 7. You're aware that the draft business plan on
19 page two one made a commitment to the blended system,
20 which initiated a lot of discussion and work with
21 various state and local departments. Furthermore, the
22 business plan also made mention -- and clear mention --
23 of further early investment in the rail systems in the
24 state in the north and in the south, which we refer to
25 as the "bookends." And furthermore, the business plan

1 also made clear mention of the fact that the 950
2 million, which is covered in Proposition 1-A for
3 interconnectivity, had been stagnating because two
4 governors had vetoed this, and we, as the Authority, had
5 recommended that we would get involved in the process to
6 assure that these moneys become available for investment
7 for this interconnectivity in these bookends.

8 So based on all of this, the colleagues in the
9 southern Californian area, and that means the
10 transportation authorities in southern California, got
11 together with some of our staff, and I mentioned
12 yesterday, CMTA, OCTA, RCTC, and Southern California
13 Regional Rail Authority, and they have drafted a prosed
14 recommended draft MOU with the intent to see whether we
15 could go with them into an MOU for funding of such early
16 investments and funding of this blended system, the
17 start or these blended systems in southern California.

18 They have put this forward to some of their
19 boards. In fact, many of their boards have already
20 approved this draft MOU for their CEOs to further
21 negotiate and discuss that with the California
22 High-Speed Rail Authority.

23 Furthermore, I think you're aware that in the
24 meanwhile, also in northern California and in the Bay
25 Area as well as inland in northern California, there are

1 also activities to start drafting similar MOUs. In
2 fact, the first of such draft MOUs was received from the
3 peninsula, which has been guided by the MTC, and it
4 sounds like the MTC will be taking these drafts, in
5 fact, two MOUs to their MTC committee on March the 14th
6 then followed by the full commission about March the
7 28th. So we have various of these MOUs that we will be
8 looking at in the future.

9 So what you have got in your board package -- and
10 I think everybody has received it as well. You received
11 this draft MOU, and staff had them -- also looked at
12 this and put forward to the board some proposals,
13 recommendations of what they thought was a possibility
14 to be incorporated.

15 I also want to add that the southern Californian
16 colleagues, that means the transit authorities in
17 southern California, had already recognized and had put
18 forward to their boards that when they talk about \$1
19 billion, this is not just Prop 1-A funds, but they had
20 said, "All other funds," so that we're in agreement that
21 it could be Prop 1-A or any other funds. It would not
22 be of concern to them if we get the funds from
23 elsewhere.

24 So again, your board package has got a copy of
25 the draft received from the southern Californian

1 transportation authorities as well as the
2 recommendations with some recommended change in text for
3 board consideration and discussion. And we have
4 asked -- we made a recommendation to you and a
5 resolution to you, Resolution 12-8, that the board
6 should give us guidance as an authority and that the
7 board should authorize the CEO and designee to continue
8 negotiates with Southern California Transportation
9 Authority based on your guidance and that the staff
10 would then return to you, as a board, to -- with a final
11 drafted MOU for your final approval.

12 So with that said, I would be open to any
13 questions or debate.

14 CHAIRMAN RICHARD: Okay. Comments,
15 questions for the CEO? Madame Vice-Chair.

16 MS. SCHENK: Thank you, Mr. Chairman.

17 A couple of things, Mr. Van Ark. The changes
18 that -- or the amendments that we had, there was a
19 public comment earlier during the public comment session
20 that there were concerns about the changes that we made.
21 Can -- do you know or does Tom know specifically what
22 those concerns were, and how do we address them?

23 MR. VAN ARK: I'm not actually sure. I
24 recall the statement. I think what the feeling was, was
25 that in the meanwhile, I think five or six of the

1 transportation authorities in the south have passed --
2 have approved the draft MOU, and I think the person who
3 commented was concerned that if we now come with
4 changes, that would mean that they would have to go back
5 to their authorities a second time around for approval
6 again.

7 On the other hand, I -- you know, our staff has
8 told the colleagues that they, in southern California,
9 during any of the negotiations that this particular MOU
10 would have to go to our board because our board has not
11 necessarily be involved in any of those -- of any of
12 these discussion. So I think, you know, once you
13 recognize that, they may well be some redrafting
14 necessary and that this may well have to go back to
15 southern California, but other than that, no, I have
16 not.

17 CHAIRMAN RICHARD: Actually, if I might --
18 let me just say that I'm not going to pretend I know
19 what all of the issues are, but there are a few here.

20 And first let me say, I appreciate the fact that
21 our CEO, doing his job, is always looking to protect
22 both the Authority and the program.

23 MS. SCHENK: Sure.

24 CHAIRMAN RICHARD: But, for example, one
25 that struck me as problematic is looking at Mr. Van

1 Ark's materials on what would be New Paragraph 12-B,
2 there's a statement that local agencies would be
3 required to use local funds to match one-to-one.

4 Now, that really exceeds the minimal requirements
5 of Prop 1-A. Prop 1-A requires that any funding be
6 matched from either private, federal, or local sources,
7 and this would only allow a match to come from local
8 sources. I think one could ask the questions, you know,
9 with our proposed initial construction segment in the
10 Valley, we're not asking Fresno --

11 MS. SCHENK: Right.

12 CHAIRMAN RICHARD: -- to put up a match.

13 So -- and, you know, I think there are a couple
14 of other places where -- where staff has tried to make
15 sure that -- or tried to be a little more specific.

16 I have to say that, you know, I looked at those,
17 and as I looked at that language, you know, it struck me
18 that we have adequate protections simply making certain
19 that -- to the extent that Prop 1-A funding would be
20 implemented here, that parties simply have to comply
21 with the requirements of Prop 1-A.

22 MS. SCHENK: Right.

23 CHAIRMAN RICHARD: I don't think we need to
24 put additional protections on top of that.

25 MS. SCHENK: So are you suggesting that we

1 not fine-tune this and -- well, what is your suggestion,
2 Mr. Chairman?

3 CHAIRMAN RICHARD: Well, my suggestion would
4 be that -- I think that Mr. Van Ark said it -- as I
5 understand it, which is that the body of the language
6 that has been approved by various agencies in southern
7 California that in that draft MOU is, you know, pretty
8 sufficient as it stands. There is some fine-tuning that
9 those agencies themselves have recognized needs to be
10 done.

11 For example, right now the documents says that
12 the funds would all come from Prop 1-A, and I think
13 there is a universal sense -- not only on their part but
14 I know that in conversations with our CEO, he also has
15 had the same view -- it should say, "from Prop 1-A or
16 any other source." And so I think there are areas like
17 that where it's really fine-tuning.

18 But when we get to the point of taking action on
19 this, I do think that since we'll be giving directions
20 to the staff, I would urge my colleagues to -- let's
21 just start with the document that's been adopted by
22 these agencies, see what comes back to us in terms of
23 fine-tuning with that. I think if we come out of here
24 with the sense that we're asking the staff to try to
25 impose this language, it really does send us back

1 through the entire approval process. And I'm not sure
2 that incrementally, we get much more than we get by
3 simply saying, "We stand on the statutes and the
4 statutory requirements for Prop 1-A." I think that will
5 help us move towards building a high-speed rail system.

6 MS. SCHENK: I agree.

7 CHAIRMAN RICHARD: Other -- yeah.

8 Mr. Umberg.

9 MR. UMBERG: Well, I do believe in order to
10 build this project out, we have to have a Memorandum of
11 Understanding with a variety of -- particularly in
12 southern California. I think this is an important move
13 on our part, and I think it bears further review. And I
14 also think that -- let me propose a substitute
15 resolution, and I'll give you the wording.

16 Number one, that the board supports the
17 development of a Memorandum of Understanding with
18 southern California transportation agencies to implement
19 proposition 1-A and the California high-speed rail
20 project.

21 Number two, the board authorizes CEO or his or
22 her designee to continue negotiations with the southern
23 California transportation agencies in development of the
24 MOU.

25 Number three, that any Memorandum of

1 Understanding be returned to the board for approval.

2 CHAIRMAN RICHARD: For formal approval.

3 MR. RICHARDS: If that's a motion,

4 Mr. Chairman, I would second that.

5 MR. HARTNETT: Mr. Chairman, I would like to
6 speak to that.

7 CHAIRMAN RICHARD: Please, Mr. Hartnett.

8 MR. HARTNETT: I agree with, actually, the
9 sentiments expressed by everyone on the issue of an MOU.
10 One, is -- I think is important is that we have MOUs
11 both in the south and in the north. As Mr. Van Ark
12 pointed out, there is an MOU being developed that has
13 not been presented to the board yet as relates to
14 northern California transportation agencies.

15 I think it's important, however, that the MOUs
16 are in sync with our business plan and I think we -- we
17 have a business plan that's under revision and will be
18 presented to us in April, and I think it'll be premature
19 to have language fixed for the MOU until the revised
20 business plan is released so that we can be comfortable
21 that any MOU, whether south or north, are in sync.

22 To me, the -- and I have no reason to believe
23 that the current MOU draft cannot be in sync with --
24 ultimately with the revised business plan with or
25 without some tweaks in the language of the MOU, but I

1 want to see the business plan, revised business plan,
2 before we finalize language upon an MOU.

3 To me, there are a few basic principles to
4 summarize. One is investment in MOUs whether south or
5 north, as I said, need to be in sync with the business
6 plan but particularly with the blended approach that is
7 described in the business plan as it is either described
8 now or as revised in the revised business plan.

9 Secondly, I think investments that are made
10 through an MOU need to be in sync with the overall
11 connectivity goals that are outlined in the business
12 plan. We've had reviewed emphasis on statewide
13 conductivity, and I think we need to be consistent with
14 that as we approach MOUs. And in connection with that,
15 I think that the parties to the MOUs have to be, I
16 think, in support of the overall goals of the business
17 plan because the purpose of the MOU is to -- for all of
18 us to work together to implement a high-speed rail
19 program at the same time benefiting, in a quicker way,
20 the local and regional transportation agencies and the
21 communities they serve.

22 So I think we need to be on the same page in that
23 regard, and so I would be hopeful that at the time a
24 revised business plan is presented to us, we would have
25 the MOU documents that could be presented as well in

1 sync with that, and that we'll all be standing together
2 in connection with those.

3 And so I can support the motion, because I think
4 the motion is consistent the principles that I believe
5 are important. I think, in large part, the draft MOU
6 already proudly reflects those principles, but, you
7 know, I'd like to see those revised business plan as a
8 part of that package.

9 And I would -- I think based upon the schedule
10 that Mr. Van Ark articulated that he understands that
11 with MTC in a northern California business plan -- or
12 northern California MOU -- would like to see that, a
13 report on that, at our next meeting as well. Whether
14 it's -- it may be premature for the board to act on
15 that. I think that's the first time the board has seen
16 it, but I think it would be helpful to see these things
17 in sync.

18 CHAIRMAN RICHARD: Okay. Other comments?

19 Let me just add, before we vote on the motion,
20 two things.

21 First of all, in the draft MOU that was presented
22 to us, there is an Attachment A, which goes to a list of
23 candidate projects. First of all, one will notice
24 immediately that the aggregate phosphorous projects,
25 it's hard to see the dollars that we're talking about

1 here, and I think that everybody understanding, but I
2 just want to state it for the record that that's
3 illustrative, and by taking action today of supporting
4 the MOU in concept, we are not, in any way, committing
5 ourselves to suggest that those are the specific
6 projects.

7 And then finally, if I could just add a comment,
8 I appreciate the commentary from my colleagues on this.
9 I do see this document as part and parcel of the
10 development of our business plan, and, in fact, by its
11 terms, it refers to the parties supporting what's in
12 chapter two of the business plan on that blended
13 approach, and we really worked closely with regional
14 agencies to do that.

15 You know, my personal view is that as California
16 high-speed rail becomes understood as not a separate
17 thing that has its own validity but really as a tool
18 that also helps strengthen our regional rail systems by
19 working together that everybody can benefit. And to the
20 extent that this MOU moves us in a direction where early
21 investments provide immediate benefits in those regions
22 for upgrades that will be ultimately needed for
23 high-speed rail, then everybody benefits. And I think
24 there's no reason to hold back on trying to make those
25 investments so long as it meets those two criteria, that

1 it provides immediate benefits to these regional systems
2 but also is building us towards high-speed rail.

3 So as I understand the motion before us, it would
4 basically express support for the -- for the conceptual
5 work that's being done on the MOU; it would direct the
6 CEO or his or her designee to come back and -- and to
7 continue that to finalize negotiations, which would then
8 be presented to this board for formal adoption.

9 Director Umberg, I just want to make sure that I
10 did not mischaracterize you.

11 MR. UMBERG: No, no.

12 CHAIRMAN RICHARD: Of course, you have the
13 language, which you provided, and we'll be voting on
14 that language as opposed to my characterization of it.
15 But I think -- I think we're ready to have a motion.

16 MR. BALGENORTH: I'd like to make a
17 statement.

18 CHAIRMAN RICHARD: I'm sorry.

19 MR. BALGENORTH: I'd just like to add an
20 amendment to the motion.

21 CHAIRMAN RICHARD: Okay.

22 MR. BALGENORTH: Just to clarify your
23 statement that there -- that the list of projects is not
24 the projects -- that we're not committing to that list
25 of projects.

1 CHAIRMAN RICHARD: Right.

2 MR. BALGENORTH: Rather than just have it
3 as --

4 CHAIRMAN RICHARD: So maybe --

5 MR. BALGENORTH: -- a statement from one
6 person, I think it will be part of the motion.

7 CHAIRMAN RICHARD: Okay. So then maybe we
8 just say that --

9 MR. UMBERG: Why don't I just amend it.

10 CHAIRMAN RICHARD: Okay.

11 MR. UMBERG: I'll just amend it, the
12 resolution, by adding a fourth point that says that
13 Attachment A to the materials presented with the agenda
14 are --

15 CHAIRMAN RICHARD: Illustrative.

16 MR. UMBERG: -- are merely illustrative and
17 not definitive as to the projects that may or may not be
18 funded.

19 MR. RICHARD: And I'll still second that.

20 CHAIRMAN RICHARD: I'm sorry. Who was the
21 moving party? Mr. Umberg.

22 All right. It was moved by Mr. Umberg, seconded
23 Vice-Chair Richards.

24 If we could call the role, please.

25 MS. MOORE: Mr. Richards.

1 MR. RICHARDS: Yes.
2 MS. MOORE: Ms. Schenk.
3 MS. SCHENK: Yes.
4 MS. MOORE: Mr. Balgenorth.
5 MR. BALGENORTH: Yes.
6 MS. MOORE: Mr. Burns.

7 Mr. Hartnett.

8 MR. HARTNETT: Yes.
9 MS. MOORE: Mr. Umberg.
10 MR. UMBERG: Yes.
11 MS. MOORE: Chairman Richard.
12 CHAIRMAN RICHARD: Yes.

13 Just as we close on this item, I know
14 Mr. Sepulveda is still here from LAMTA. I know he's
15 worked on this, a number of people have, and I just want
16 to commend them for their work so far. And as my
17 colleague, Mr. Hartnett, said, looking at this as we
18 will in the context of our business plan option, I think
19 it will be a very good thing. So thank you all for your
20 work so far. Thank you, Mr. Van Ark.

21 Next item is Item 8., which is Title VI Policy
22 and Program Plan.

23 Ms. Padilla -- oh, I'm sorry. Mr. Van Ark.

24 MR. VAN ARK: Mr. Chairman, if I could just
25 introduce Pat Padilla. You know she is working for us

1 on all the aspects of the small business, disadvantage
2 business info also Title VI, and she's been working on
3 the policy as well as the program plan, and she will be
4 doing the presentation on that today.

5 CHAIRMAN RICHARD: Good afternoon.

6 MS. PADILLA: Good afternoon. Thank you Mr.
7 Van Ark, and thank you, Chairman and members of the
8 board, for giving me this opportunity to present to you
9 the Authority's Title VI Policy and Draft Program Plan,
10 which is before you under Resolution HSRA12-09.

11 The areas I'd like to highlight for you that are
12 basically moving forward in adopting this policy and
13 plan, it is fully in accordance with the federal funding
14 conditions and the Federal Railroad Administration, FRA,
15 on September 15th, which directed the Authority to
16 develop and implement Title VI Policy and Title VI
17 Program Plan to address how the Authority will ensure
18 nondiscrimination and federal contracts. To meet these
19 objectives of ensuring nondiscrimination in all facets
20 of the California High-Speed Rail program, project
21 activities, services, and contracts specifications. The
22 Authority has adopted -- or will be adopting today, a
23 policy which is stated in part that the Authority is
24 committed to ensuring that no person is excluded from
25 participation in or denied the benefits of this program,

1 activities, and service on the basis of race, color,
2 national origin, age, sex, or disability as afforded by
3 Title VI of the Civil Rights Act of 1964 and related
4 acts. This policy will apply to all Authority programs,
5 projects, activities, and services and will be
6 incorporated into all contracts specifications moving
7 forward.

8 The Title VI Plan also serves to establish the
9 monitoring and evaluation criteria to ensure compliance
10 with Title VI provisions. In accordance with very
11 specific circulars and guidance received from the FRA,
12 the plan includes twelve principle elements in
13 conformance with the guidance received from the FRA,
14 which was to follow the federal transit circular,
15 4702.1B. This particular circular was recently revised
16 on September 2011. It's the most recent circular issued
17 relative to Title VI, which provides better clarity,
18 accountability, transparency, and consistency in its
19 application and evaluation process. The plan fully
20 complies with all aspects of this guidance.

21 In addition to that, the Authority also reviewed
22 and considered in the drafting of this plan, the federal
23 highway administration circulars as well to prevent
24 discrimination federally-related programs and all
25 related approaches.

1 The twelve elements -- I'm going to highlight a
2 few of those elements, not necessarily all the twelve
3 elements because a number of the elements, until you
4 move into the operation mode, many of these elements
5 will not -- will be elaborated on them. It is important
6 for me to note that this is a living document. You have
7 a requirement under these components. There's an annual
8 Title VI certification and assurance that the board must
9 make. There is submission of tri-annual Title VI
10 program reports, notification to beneficiaries of the
11 protections under Title VI. We must go out with a
12 public notification both in English and currently, it is
13 being drafted in Spanish. In terms of our complaint
14 process under the protection that they have under Title
15 VI as it relates to all of your authority program
16 activity, record and reporting of investigation
17 proposing inclusiveness in the public involvement of all
18 the diversities represented in your communities and
19 providing meaningful access to limited English
20 proficient persons. This particular component will,
21 along with the environmental guidance component, will be
22 brought back to the board in May for your consideration
23 and adoption.

24 So before you, under the current resolution, the
25 board is requesting your approval of the policy and

1 draft plan and authorizing the Chief Executive Officer
2 to sign the policy, to assimilate that within the
3 organization and externally as well as providing
4 authorization to move forward in submitting the draft
5 plan to the FRA for their review, consideration,
6 comment, and final approval. The plan will then be
7 brought back before the board for final adoption.

8 CHAIRMAN RICHARD: Thank you, Ms. Padilla.
9 I had a few questions, but I'll defer to my colleagues
10 first.

11 Okay. I just had a few. Thank you, first of
12 all, for the body of work here. It's obviously very
13 comprehensive.

14 I think you said this at the beginning but would
15 you describe this Title VI program as -- as being pretty
16 customary? I mean, is it similar to what we would see
17 in Caltrans or BART or LA Metro or something like that,
18 or is this something that we've crafted? Does it need
19 to be unique?

20 MS. PADILLA: No, it does not need to be
21 unique. I mean, you are identified as a transit
22 operator above the ten million, so there are a number of
23 additional elements up for consideration.

24 CHAIRMAN RICHARD: Right.

25 MS. PADILLA: In terms of -- no. This is

1 very much like a Title VI plan for any federal recipient
2 agency.

3 CHAIRMAN RICHARD: And the reason for my
4 question was just that I know people have challenged
5 agencies under Title VI, and I just wanted to get some
6 comfort that what we would be adopting here is similar
7 to things that have passed muster in other
8 circumstances.

9 MS. PADILLA: It is.

10 CHAIRMAN RICHARD: Okay. I think you
11 answered this with your last question -- or your last
12 comment but I notice, for example, there are a number of
13 places like on -- you know, page nine, where, you
14 know -- talk about the Authority will do this, or
15 there's a number of things in the future tense. Is
16 that -- that's okay because we're going to be coming
17 back with more specific implementation?

18 MS. PADILLA: Because this is living
19 document, you make annual assurances. There's elements
20 of these programs that are not applicable at this stage
21 of the process.

22 CHAIRMAN RICHARD: I see. Okay.

23 MS. PADILLA: You're not an operating entity
24 at this time, but there will be other demographics, data
25 collection, and surveys analysis that must be performed.

1 So while they must also be addressed in
2 accordance with the guidance received in the circulars,
3 they are not fully implementable.

4 CHAIRMAN RICHARD: Okay. So there's nothing
5 deficient about them not being implemented now because
6 it's just appropriate to the stage of the development
7 that we're at.

8 MS. PADILLA: Yes.

9 CHAIRMAN RICHARD: Okay. And then I think
10 that answers, you know -- my other question is on the
11 first paragraph on page nine, it says, you know, "The
12 Authority will seek out and consider," but that all will
13 happen in the course of the development going forward.

14 I guess the only other real question I had was on
15 page twelve. The last paragraph says "The Authority
16 shall set system wide service standards necessary to
17 guard against service design and operational policies
18 that have disbursed impacts."

19 MS. PADILLA: Yes. And this will be more
20 elaborated and involved in -- this is basically a data
21 collection requirement --

22 CHAIRMAN RICHARD: Okay.

23 MS. PADILLA: -- that will be required as we
24 move into and identify the demographics in terms of our
25 ridership.

1 CHAIRMAN RICHARD: So my question was -- and
2 it could be for you, it could be for the CEO, and it
3 doesn't have to be answered today, but at some point, I
4 think what I'd be interested in is how do we make sure
5 that that's actually driven into the engineering, into
6 the Design-Build?

7 So we're collecting this data, but we're also
8 giving an RFP, a contract to a Design-Build contractor,
9 and how does one make certain that the information that
10 we've collected, it's driven into the engineering design
11 process?

12 MS. PADILLA: There are a couple of plans.
13 I mean, part of your current contract contains public
14 involvement and public participation requiring all of
15 the surveys and collection as well as analysis and
16 strategies moving forward in compliance with these
17 provisions. This stage that we are in now, we have just
18 requested those documents from our current consulting
19 staff that has these requirements in their contracts,
20 and they are under review.

21 So I need to verify that they are being
22 implemented in accordance with Title VI provision before
23 I'm able to state very clearly that we are in full
24 compliance.

25 CHAIRMAN RICHARD: Thank you. I just --

1 probably the last thing I would say is that we did
2 establish, last time, based on the recommendation from
3 our CEO, that we expanded the scope of our finance and
4 audit Given the prominence of Title VI issues these
5 days, and I'm certainly familiar with some of these from
6 my BART experience, where actually, successful
7 litigation was brought that stopped a project because of
8 an insufficient Title VI program.

9 I'd like to suggest as part of the adoption
10 that -- and I'll look to Ms. Padilla -- but, you know,
11 at least once a year, the finance and audit committee be
12 given some report to make sure that we are, in fact, in
13 compliance and maintaining compliance with our Title VI
14 program so that this board can have some assurance.
15 They can then report back to the board, but it does seem
16 to me that in addition to the staff work, and we're
17 fortunate to have excellent staff on this, experienced
18 staff, but this is probably an area where, in terms of
19 board governance, we ought to afford ourselves at least
20 once a year, we're looking at this as we go forward to
21 make sure we're in compliance.

22 Mr. Hartnett.

23 MR. HARTNETT: I think that's a good idea.
24 I would phrase it as "at least once a year and more
25 often if necessary as determined by the committee." So

1 that the minimum would be once per year.

2 MS. PADILLA: We can amend the draft to
3 include that language.

4 CHAIRMAN RICHARD: I think that would be
5 good to do that without objection.

6 Okay. And this is an action item at this point.

7 MS. PADILLA: Yes, it is an action item.

8 CHAIRMAN RICHARD: Okay. Do I have a
9 motion?

10 MS. SCHENK: I'll move.

11 CHAIRMAN RICHARD: Moved by Vice-Chair
12 Schenk.

13 MR. BALGENORTH: Second.

14 CHAIRMAN RICHARD: Second by Mr. Balgenorth.

15 MS. PADILLA: Thank you.

16 CHAIRMAN RICHARD: Please call the role.

17 MS. MOORE: Mr. Richards.

18 MR. RICHARDS: Yes.

19 MS. MOORE: Ms. Schenk.

20 Ms. MS. SCHENK: Yes.

21 MS. MOORE: Mr. Balgenorth.

22 MR. BALGENORTH: Yes.

23 MS. MOORE: Mr. Burns.

24 Mr. Hartnett.

25 MR. HARTNETT: Yes.

1 MS. MOORE: Mr. Umberg.

2 MR. UMBERG: Aye.

3 MS. MOORE: Chairman Richard.

4 CHAIRMAN RICHARD: Yes.

5 Okay. Thank you. Okay. Our next item is Item
6 9, and I want to make sure we keep a quorum through this
7 so -- and since we do have two people who are
8 determining whether or not they are going to want to
9 speak on this item, if I could ask staff to give us, you
10 know, as quick a briefing as possible.

11 MR. TRACY: Certainly.

12 MR. VAN ARK: So, Mr. Chairman, members, we
13 have a change. Tom Tracy, who is the program manager
14 for the region, is going to be doing this presentation
15 for most of the day.

16 CHAIRMAN RICHARD: Okay. And Vice-Chairman
17 Richards reminded me that we're now past the action
18 items, so we probably are okay even if we lose a quorum,
19 but we'll move on.

20 MR. TRACY: I'm here to give a brief
21 presentation on the status of the revised
22 Fresno/Bakersfield EIR/EIS.

23 CHAIRMAN RICHARD: Since you're not Mr.
24 Abercrombie, why don't you introduce yourself for the
25 record.

1 MR. TRACY: Oh, yes. Okay. Thank you.

2 Tom Tracy. I'm the program manager, regional
3 manager, for the Fresno/Bakersfield project.

4 And so good afternoon, Mr. Chairman and members
5 of the Authority board. Just real quick, since last
6 October, we had -- last October, the Authority board
7 went along with the staff recommendation to take the
8 draft EIR/EIS that we were preparing for Fresno to
9 Bakersfield and have us go back and make some changes to
10 the project. In December, we presented to you
11 alternatives analysis to add a Hanford west bypass to
12 the project, and since that time, we have been working
13 diligently on the program to improve the draft and make
14 the revisions. We've completed the preliminary
15 engineering of the Hanford west bypass. We have ongoing
16 analysis and revisions to the other alignments on the
17 project, all the way from Fresno to Bakersfield, and
18 we're preparing a revised draft that we -- is undergoing
19 update and reviews right now. We anticipate to release
20 that draft to the public in early this summer.

21 So just briefly, the project schedule, ongoing
22 preliminary engineering, ongoing review of the existing
23 draft, the existing draft document still has a lot of
24 real good information that is going to be carried
25 forward into our revised draft. So it's still available

1 for the public to consider. We will be issuing the
2 revised draft in early summer. At which point, it will
3 go out for public review and comment. We plan to have
4 final EIR/EIS available in the fall with a record of
5 decision notice of determination in the later part of
6 this year.

7 So far, we have received about 1500 comments on
8 the project. Primarily, the issues are relevant to
9 community impacts, agricultural impacts, how is the
10 project going to be funded and private property impacts.
11 We're making revisions to the project to includes as --
12 and to learn from those comments all the comments that
13 we have received since -- or up through October 13th,
14 we're conducting additional environmental analysis that
15 we need related to the work that we have been doing, and
16 I just want to make a special point that when we get to
17 the final EIR/EIS, that's when we will publish our
18 actual responses to all of the comments that were
19 received from the first draft and in the second draft.

20 So I want to give you a briefing now on the
21 entire project as to refresh your memory about what the
22 project is and where we are. 114 miles approximately
23 from Fresno to Bakersfield, part of the backbone of the
24 system in the Central Valley. We have three station
25 locations, one in Fresno, one in Bakersfield, and a post

1 station in the Hanford area to serve Kings and Tulare
2 region. Local benefits include enhanced connectivity
3 for the Central Valley to the rest of the state,
4 improved air quality, and certainly, jobs for this part
5 of the state.

6 Starting in Fresno, we have a primarily accurate
7 alignment that enters from the north and into downtown
8 Fresno. In the Merced to Fresno project, which is our
9 neighbor directly to the north, we identified that the
10 station location would be at what is known as the
11 Mariposa Street Station. So that is going to be noted
12 in our document. We're still going to talk about those
13 station alternatives that we originally had, but we're
14 going to identify the Mariposa Street Station was the
15 preferred out of the Merced to Fresno EIR/EIS.

16 Just a couple of pictures here, just so you could
17 see that these two pictures on the side kind of show
18 that the station location at G and Tulare Street is
19 right where the Mariposa Street Station would be, and
20 then the picture below is looking along H Street. The
21 line would be off to your right.

22 So out of Fresno, the project continues along the
23 BNSF corridor and along Golden State Boulevard and then
24 turns due south. Excuse me. I said BNSF. UPRR
25 corridor. Then turns due south along the BNSF corridor.

1 You'll see a little orange box, there, at the lower part
2 of the screen. That's indicating the heavy maintenance
3 facility proposed site that Fresno proposed for the
4 program. It's one of five that's in consideration along
5 the corridor.

6 Moving farther south, the alignment continues
7 along the BNSF railway directly adjacent to it except
8 for a few places where we had to make some revisions to
9 our alignment because of geometry, and then we start to
10 approach the Hanford area. Just north of the community
11 of Layton, our alignment splits into two alternatives.
12 You'll see the blue line, there, is the -- what we call
13 the east alternative around Hanford -- around the east
14 side of Hanford. And then the yellow line is the new
15 Hanford west bypass. Both of those alternatives have
16 stations and are -- have been worked out so that they
17 have access off of Highway 198.

18 One -- just a few things to note about the
19 Hanford west alternative, it's about two miles shorter
20 than the eastern alternative. It stays adjacent to the
21 BNSF railway several miles longer, and we've done
22 everything we can to have it avoid the Layton Community
23 and the -- and the build area of the Hanford community.

24 And then both of these pictures, the upper one,
25 is looking at the -- kind of in the stationary on the

1 east side just off of Lacy Boulevard near the Ponderosa
2 Community, and then the lower picture is just north of
3 where the station would be along the western
4 alternative.

5 So continuing south along the BNSF railway, the
6 alignment enters into the City of Corcoran. We have
7 three alternatives in Corcoran. Two of them go right
8 through the middle of town. One is on the east side of
9 existing BNSF railway, that was the elevated
10 alternative. The one on the west side of the existing
11 railway is at grade, and then we have the Corcoran
12 bypass that's also at grade.

13 This is just showing a few of the alternatives.
14 The upper picture along the bypass is primarily
15 agricultural, and the one on the lower picture is right
16 through downtown -- not through downtown but directly
17 adjacent to downtown Corcoran, and the railway would be
18 just off to the left side of the photo, there.

19 Continuing farther south still, we get close to
20 the Allensworth area. The alignment -- and I forgot to
21 mention -- even through the Hanford area and except for
22 that elevated section, that one alternative in Corcoran,
23 most of this -- most of the alignment is at grade. It
24 continues at grade south out of Corcoran toward
25 Allensworth. Here, we have two alternatives as well,

1 because up in the upper part of this, where it makes a
2 split, is Allensworth State Historic Park. The primary,
3 where we call BNSF alternative, runs directly adjacent
4 to BNSF railway, which is very close to the park.

5 So we have -- we have added -- we did include an
6 alternative alignment that goes to the west. It's
7 primarily at grade except for about a two-mile section
8 up near the Pixley Wildlife Refuge where we are working
9 over a creek and an existing rail spur.

10 Continuing south and then these two pictures are
11 from the BNSF alternative looking at the Allensworth
12 Park. Continuing south toward Wasco and Shafter, we
13 have two alternatives again. Primarily one along the
14 BNSF right-of-way and through Wasco and through Shafter.
15 It's, again, primarily at grade except in those cities,
16 we -- the alignment will be above grade.

17 We have, here, a bypass alternative, and as you
18 may recall previously, we had adjusted that bypass
19 alternative to miss some -- an oil facility and a
20 property with historic designation. Other things that
21 we have done is this location up near Kimberlina, BNSF,
22 we are planning to move the BNSF line over close to us
23 so that we don't leave a little island of land between
24 the two railroads, and that would be off to the right of
25 your photo. It's probably -- it's very difficult to

1 see, and then in Shafter the alignment would be elevated
2 behind that, as you see in this picture, there.

3 And then in this picture, what you would want to
4 notice is three heavy maintenance facility candidate
5 sites that Kern County has proposed. One, up near Wasco
6 and two south of Shafter. The two south of Shafter,
7 each one is designated or is -- has been -- has features
8 that each one would serve one of the different
9 alternatives.

10 CHAIRMAN RICHARD: Excuse me, Mr. Tracy.

11 MR. TRACY: Yes.

12 CHAIRMAN RICHARD: We have two members
13 who -- members who are having to leave and even though
14 this is informational, we do have some scheduled
15 speakers on this, and our members do want to hear from
16 the public. So could I ask you to either -- how much
17 longer is your presentation?

18 MR. TRACY: Well, let me -- I can skip up to
19 probably -- I can skip up through -- up to this -- it's
20 almost done.

21 CHAIRMAN RICHARD: Let me just ask this
22 question. The two gentleman who are here -- I'm going
23 to be presumptuous on this. The two gentlemen who are
24 here are from Kings County. We're now down in
25 Bakersfield. So I just want to see.

1 Mr. Olivera, is this something that you do want
2 to comment on at this point?

3 MR. OLIVERA: Well, specifically about the
4 briefing package that was on the table outside. There's
5 some issues regarding some of the things that are
6 transpiring, not the design but the activities.

7 CHAIRMAN RICHARD: Mr. Tracy, let's do this.
8 Let me just ask you to standby for one moment.

9 MR. TRACY: Sure.

10 CHAIRMAN RICHARD: Mr. Olivera, if you could
11 address the board at this point, you'll get the maximum
12 number of members, who I think would like to hear what
13 you have to say, and Mr. Browning as well.

14 MR. OLIVERA: Thank you.

15 CHAIRMAN RICHARD: And Mr. Browning as well.

16 MR. OLIVERA: Thank you. Frank Olivera,
17 Citizens for California High-Speed Rail Accountability.

18 CHAIRMAN RICHARD: Good afternoon.

19 MR. OLIVERA: The question that we had about
20 this presentation is public involvement. It's on the
21 back page of the handout that's out there.

22 One of big things that we've always discussed
23 when I've come before you was to get the details right,
24 to accurately portray information to the public and
25 board. In this it says, "Public involvement activities

1 are also ongoing to educate stakeholders in the project
2 and receive feedback on alignment features. Recent
3 outreach meetings have concerned -- have included, "
4 there's a list of entities there, Kings County, Kern
5 County, Tulare County, Fresno Farm Bureau, and other
6 agricultural interests.

7 What happened to Kings County Farm Bureau and
8 other agricultural interests? Who are these people that
9 are being contacted? We don't see them in our
10 community. They may exist, but it's not widely known or
11 commonly known. City of Hanford.

12 Most of these places -- and I'm not saying that
13 these meetings aren't occurring -- but I don't
14 understand where these entities and the people in my
15 communities interests are being addressed. We don't see
16 it happening. We've asked.

17 The County requested way back in April to have
18 interaction, certain kind of interaction, to coordinate
19 activities. I know that's not happening. They have
20 written several letters over the last eight or nine
21 months to the Governor to the board, and they have never
22 received a response.

23 So my question is are these details really
24 happening? Like other details we've discussed in the
25 past that didn't happen, are these really happening?

1 Are you making decisions ultimately, not today, on
2 fraudulent information? Thank you.

3 CHAIRMAN RICHARD: Thank you, Mr. Olivera.

4 Mr. Browning, did you want to speak to this item,
5 too, sir?

6 MR. BROWNING: Yeah. Thank you very much.

7 Rob Browning, Kings County.

8 First, I'd like to thank you for two minutes.
9 It's thrown me for a loop, and I asked you to believe
10 that Frank and I have not talked about what we are going
11 to say.

12 I want to talk about a couple of statements that
13 I have seen in the press, that all of us have seen in
14 the press, that have been made by your staff, by board
15 members, and in some instances, by the Chair. One of
16 these statements is that there is no intent to mislead
17 or misinform the public. Another statement that we see
18 quite often is that there will be increased transparency
19 in the process. One other comment is that communication
20 between the board and concerned citizens and government
21 agencies will be improved or started.

22 I'd just like to say that I see -- there's no
23 coordination between Kings County officials and
24 agencies, which was promised way back in mid-January.
25 We are not aware of it. There's a continuous

1 misstatement that there is a requirement to initiate
2 construction in the Central Valley by fall of 2012, and
3 that is a lie. There is no such requirement. That was
4 established several times, but they drove the nail in
5 pretty hard in the Senate hearing back in Washington.
6 And stated there's a ruling to examine alternative
7 routes, for instance 99 but not I-5, and I am at a loss
8 to understand why you don't -- you don't -- why I-5 is
9 being shortchanged. Why they don't get an
10 investigation. Thank you.

11 CHAIRMAN RICHARD: Okay. Thank you.

12 Mr. Tracy, we'll have you continue.

13 I do just want to make one comment at this point,
14 which is that on February 2nd, which was, I think, the
15 last meeting, when I assume the Chair -- on that day, we
16 did send a letter to both the Kern County Board of
17 Supervisors and the Kings County Board of Supervisors
18 basically offering to meet and have received a letter
19 back from the Kings County Board of Supervisors. My
20 assistant has been asked by me, in fact, yesterday, to
21 proceed to try to schedule such a meeting.

22 So I do want to let you know that, in fact, that
23 is something that's very high on our agenda that we hope
24 to do, and I'm sure that given that it's a public buy,
25 it will be something that has adequate attention given

1 to it.

2 So anyway, thank you, gentleman, for -- I know
3 it's a long trek from --

4 MR. BROWNING: Thank you for that
5 information.

6 CHAIRMAN RICHARD: Mr. Tracy, thank you for
7 your indulgence.

8 MR. TRACY: I'll continue.

9 Into Bakersfield now. This is showing the entire
10 Bakersfield alignment. It enters Bakersfield on the
11 west primarily at grade, and then as it gets into the
12 urban area of town, it splits into two elevated
13 alternatives that go through town and then join up again
14 into one alternative at approximately Oswell Street east
15 of the main part of Bakersfield. From that point on, it
16 is part of the Palmdale -- or yeah. The Bakersfield
17 Palmdale project.

18 In the EIR/EIS, we designate the blue line as the
19 BNSF alternative and the red line on this map as the
20 Bakersfield south alternative. It's named that way
21 because it lines with the south station and I just want
22 to mention that because the rest -- the rest of the
23 presentation refers to those two alternatives.

24 Focusing in on downtown, we're aware of several
25 areas where our alternatives are impacting downtown

1 Bakersfield. As the alternatives come into downtown
2 near Highway 99, the -- what is called the south
3 alternative, the red line -- it crosses through the City
4 of Bakersfield corporation yard as an area that we know
5 that we need to work with Bakersfield on how to provide
6 some mitigation on how that construction would happen
7 without -- with minimally impacting their operation.

8 The other alternative goes through BNSF, one of
9 their main yards, and we have worked on the design to be
10 able to accommodate their operations already.

11 Continuing onto the east, there are two primary
12 areas that are interested in the community that we're
13 aware of. Mercy Hospital would be -- is very close to
14 one of the alternatives, that -- the red alternative.
15 Then the BNSF alternative, you're probably aware of the
16 potential impact to Bakersfield High School. There's a
17 picture, there, that shows where the alignment would go
18 right over the top of that existing building. That's
19 their industrial arts building. And you can see running
20 right behind it, they already have the BNSF railway.

21 Continuing on to the east, as well, we have the
22 two station alternatives in the existing alternative.
23 We have one that is on the north side on the BNSF
24 alternative, the blue line. It's directly adjacent to
25 the Bakersfield Amtrak station. The other alternative

1 crosses over to the south, the south alternative, and it
2 has a station just about a block south from there.

3 There are a lot of -- we heard a lot of comments
4 from the Bakersfield community and primarily about
5 impacts to the cultural resources in that area, and this
6 is primarily in eastern Bakersfield, where -- how the
7 two alignments come together and there's several
8 churches and schools in that area that are close to
9 being impacted if not directly.

10 So we received many of these many comments, and
11 what are we going to do about it? Well, we've -- we've
12 worked out something that we think is -- is a good
13 solution. We're introducing what we call the
14 Bakersfield Hybrid Solution informed by comments from
15 the stakeholders in our ongoing discussions with both
16 the City of Bakersfield and Kern County.

17 The solution seeks to reduce community impacts
18 associated with BNSF alternative and the south
19 alternative. It really represents a combination of
20 two of the two existing alternatives. And we're going
21 to go ahead, and we're moving forward with some detailed
22 engineering and environmental analysis of this hybrid
23 solution that we would -- that we planned to include in
24 the revised draft EIR/EIS.

25 So just kind of going back, what that looks

1 like -- and I know I did that really fast. There's two
2 lines. The hybrid comes in, basically, on what would be
3 the red line, and then by the time it gets to downtown,
4 it exits on almost what would have been the blue line.
5 It combines some of the better attributes of the two
6 alternatives, and you can see it, there, as it's snaking
7 through, but we do get penalized with our speed going
8 through Bakersfield. We would have to slow the train
9 down.

10 So just how would this work compared to the other
11 alternatives that we have? Well, we'll still be going
12 through the city's corporation yard, and we are working
13 on ideas on how we can mitigate some of that impact by
14 how we place the structure, it's elevated. How we place
15 the structure and how we construct the structure so that
16 we mitigate impacts on their operations. As it moves
17 farther to the east, it still stays in relatively the
18 same place adjacent to Mercy Hospital as it did before.
19 It's not -- neither of these alternatives, we're going
20 to directly impact the hospital, but there's still -- it
21 does avoid Bakersfield High School as you can see.

22 Moving further east -- and there's the hospital.
23 Moving further east, it -- the station then is lined up
24 a little bit east of where the two existing alternatives
25 are, which gives us an opportunity to avoid potential

1 impacts we had to St. George Greek Orthodox Church. It
2 also minimizes impacts to many of the other cultural
3 resources that are there. The platforms are roughly
4 centered over union avenue. So it's a little farther
5 away from the Amtrak station, but not a great deal of a
6 distance. And we would work on -- work with the city on
7 how we could sequence the construction through some of
8 their parking areas. It will continue to go through
9 parking areas for the -- for their arena and their
10 convention center, but again, it's elevated, and we want
11 to work with them to sequence that construction so that
12 we can minimize impacts.

13 Many of the impacts that we -- were identified in
14 Bakersfield are -- are reduced by these alternatives.
15 Going farther east, the primary way we were able to do
16 that is we were able to bring the alignment a lot closer
17 to the existing rail alignment. So instead of going
18 right through some developed parts of town where there
19 are homes and such, we're over in more industrial areas
20 and a little bit more open area.

21 So then it continues onto the east and joins up
22 again with the -- at Oswell Street into a single -- or
23 joins up there with the alternatives going up onto
24 Palmdale.

25 So that's the Bakersfield hybrid solution that

1 we're planning to include in our draft, and we're
2 working on that now.

3 Just finally wrapping up, we have been having
4 continued outreach. This is not an exhaustive list of
5 all the outreach we have had. And just to let you know
6 that we're continuing to do that. We have a lot more
7 trips we need to make to Bakersfield, to Kings County,
8 to Fresno, everywhere up and down the line. So we
9 continue to work on this project.

10 As I mentioned before, we have the schedules to
11 keep moving on this. We have -- we really want to get
12 this thing -- the record of decision by the end of the
13 year so we can get this out in early summer.

14 And that's my presentation. If there's any
15 questions.

16 CHAIRMAN RICHARD: Very good, Mr. Tracy.
17 Let me ask my colleagues first. Any questions?
18 Mr. Balgenorth.

19 MR. BALGENORTH: The only comment is, I'm
20 glad to see that you're doing a lot more work in the
21 community than has been done in the past. I think it's
22 critical if we're going to have this thing go forward.
23 So I congratulate you on reaching out. There's still
24 more that needs to be done. It's obvious, but thank you
25 very much.

1 MR. TRACY: Sure. Thank you.

2 CHAIRMAN RICHARD: I just had one comment
3 given the comments made but our public speakers, it
4 probably would be good -- I understand and accept that
5 the board materials you used subset of -- of the
6 outreach but picking up on Mr. Balgenorth's comment, it
7 might be good someplace -- on the website or someplace
8 else -- when we do have community meetings, when we plan
9 them, when we have them to be listing those so that
10 people who want to follow what we're doing, want to see
11 if there is this outreach, can have a sense of that, and
12 they don't have to guess based on some documents.

13 So I think if we could do that, that would be
14 good. I'm looking at Mr. Simmens as well. He's
15 nodding. I want the record to show.

16 So -- but thank you. It's going to be a lot of
17 work to do this, but I appreciate the staff trying to
18 work with these sensitive areas. We have a lot of work
19 to do. Thank you, Mr. Tracy.

20 Next item is Item 10 Update on the Partially
21 Revised Draft Program EIR.

22 MR. VAN ARK: So Mr. Chairman, board
23 members, Mr. Freytay is going to present this section of
24 the agenda.

25 Mr. Freytag.

1 MR. FREYTAG: Thank you. So the purpose of
2 this presentation is to provide the board with a brief
3 update on the 2012 partially revised program EIR.

4 I want to start with a short recap of where the
5 Authority has been in the programmatic planning process.
6 So the Authority completed a program EIR/EIS with the
7 FRA for the statewide high-speed train system in 2005.
8 That program EIR analyzed corridors and stations
9 location implementing the high-speed train system across
10 the state. At the conclusion of that process in 2005,
11 the Authority opted to make no final decision on route
12 in the Bay Area and instead focus on a second program
13 EIR that looked at the Bay Area to Central Valley
14 connection.

15 The Authority and FRA prepared the Bay Area to
16 Central Valley draft program EIR/EIS between 2005 and
17 2007 focusing on this area shown in blue here on the
18 map, so that hatched area across the state.

19 The Bay Area to Central Valley program EIR
20 studies 21 route alternatives for the high-speed train
21 system including 11 alternatives that use the
22 Altamont -- let's see here. In my -- my pointer, here,
23 shows that's the Altamont corridor up at the top and
24 looked at six alternatives that would use Pacheco Pass
25 alignments, which goes down here at the bottom. And

1 then we looked at another four that would use both
2 passes. So adding all these different segment and
3 pieces up, we developed 21 network alternatives.

4 The purpose of this program EIR was to support
5 the choice of what the document calls "overall network
6 alternative" as well as individual alignment and station
7 locations that will become apart of the statewide
8 system.

9 At the outcome of that process in 2008, the
10 Authority selected the Pacheco Pass network alternative
11 serving San Francisco to San Jose.

12 So why is there a partially revised draft EIR
13 now? Well, CEQA litigation has been ongoing since 2008.
14 The Authority took down its 2008 decision and is making
15 new decisions in 2010 based on a revised program EIR.
16 The 2010 document was challenged in litigation as well.
17 The court held a hearing on the merits of two cases in
18 August 2011, that was Atherton 1 and Atherton 2.

19 In November of 2011, the court issued its
20 decisions on the challenges to the 2010 revised program
21 EIR and decision. The results were mixed. The court
22 found much of the content on the EIR as being
23 challenged, complied with CEQA. These included the
24 alternatives analysis and the ridership model. The
25 court did find that certain issues needed more work to

1 comply with CEQA.

2 So the partially revised draft program EIR was
3 developed to address the issues identify by the court in
4 November 2011 as needing more analysis and included
5 noise and vibration and construction impacts associated
6 with the shifting of Monterey Highway south of San Jose,
7 the traffic impacts on surrounding local roads,
8 narrowing the stretch of Monterey Highway south of San
9 Jose, noise and vibration impacts or the potential for
10 freight tracks to be closer to adjacent lane uses on the
11 San Francisco peninsula, impacts for the potential for
12 lane closures along the peninsula as well.

13 The document also has a chapter to address new
14 information since 2010 and also includes a staff
15 recommendation that the Pacheco Pass network alternative
16 serving San Francisco via San Jose remain the preferred
17 alternative.

18 The document that we have prepared, the partially
19 revised draft program EIR, was completed in January of
20 this year. It's roughly about a hundred and ten pages
21 long. It was issued in on January 6, 2012 for a 45-day
22 public comment period, notice of availability was sent
23 out to thousands and the comment period closed on
24 February 21st 2012.

25 In addition, the Authority hosted a public

1 meeting on February 9th in San Jose to provide an
2 opportunity to members of the public to provide comments
3 verbally and have them transcribed by a court reporter.
4 We had six people provide comments.

5 By the close of this comment period, the
6 Authority received a total of 54 comment letters and
7 over about 400 comments. These include a federal
8 agency, a state agency, 16 local agencies, nine
9 organizations and businesses, 20 individuals and the six
10 from the public hearing.

11 As notice of comments were received between
12 January 6, 2012 through February 21st, comments will be
13 included in the partially revised final program EIR.

14 Frequently raised issues in the document. What's
15 typical with the EIR common process is the Authority
16 received numerous comments expressing opinions on the
17 project and otherwise. Some were against the project
18 for various reasons including increased cost or just the
19 general state of the economy, and some were in favor of
20 the project. Consistent with our past experience in the
21 Bay Area Central Valley program EIR, some comments
22 indicated a preference for Pacheco Pass while others
23 indicated a preference for Altamont pass. Many of the
24 comments did not address a substantive comment of the
25 partially revised draft program EIR, and a few

1 commenters even stated that they didn't review the
2 document.

3 Of the comment letters that did provide
4 substantive input, the top issue was concern over the
5 track impact from the San Francisco peninsula. The
6 second recurring issues was how the information in 2012
7 -- sorry. The draft 2012 business plan affects the
8 program EIR, and several comments suggested that the
9 business plan changed everything and that the program
10 EIR needed to start over from scratch.

11 A third recurring issue in the comments is the
12 view that the Authority should not continue to propose
13 and consider a fourth track alignment in the peninsula
14 and should instead limit the consideration only to
15 blended system as proposed by Congresswoman Eshoo and
16 Assembly Member Gordon in April 2011.

17 So our next steps in the process include
18 preparing responses to comments and issuing the
19 partially revised final program EIR. At an upcoming
20 meeting, the board will be asked to consider a
21 resolution that would rescind the September 2010
22 decision certifying the revised program EIR and
23 selecting the Pacheco Pass network alternative serving
24 San Francisco via San Jose. The formal ruling is
25 required as part of complying. The board will also be

1 presented with potentially revised final program EIR for
2 board consideration in an upcoming board meeting. At
3 that time, the board will consider whether to certify
4 the document for compliance with CEQA and make new
5 programmatic decisions. In this process, the board will
6 have the 2008 final program EIR, the 2010 revised final
7 program EIR, as well as the 2012 partially revised final
8 program EIR and will consider all of this documentation
9 and the entire record including the entire record of
10 public input prior to making any new decisions. Thank
11 you.

12 CHAIRMAN RICHARD: Thank you. Questions?

13 Mr. Van Ark, do you have some comments on this?

14 MR. VAN ARK: Yes, please. Mr. Chairman,
15 members, before we move on from this particular subject,
16 I'd like to make some comments.

17 I know there's some other decisions for today for
18 the board, but I did want to make mention that when I
19 took on this job as CEO in 2010, I stated that at that
20 stage, and I've done so in many parts of this alignment,
21 that I would carefully assess past decisions that were
22 made on the project, and I did exactly the same for this
23 particular part of the alignment. I looked at all the
24 assumptions and concepts that had led the Authority in
25 the past, in 2008 and in 2010, to have chosen the

1 Pacheco Pass for the connection between the Bay Area and
2 the Central Valley.

3 I also spent considerable times talking to
4 various elected officials, local officials, government
5 officials, stakeholders along the route. I have been on
6 that route many times, and I've spoken to many of the
7 people along that alignment. I also looked carefully at
8 the operational parameters for this alignment, and, you
9 know, compared them with what I know from the rest of
10 the world, that's where I basically come from, and I'm
11 going to say that the staff recommendation in the
12 partially revised draft program EIR may need Pacheco
13 Pass, which will serve the San Jose and San Francisco in
14 a single line alignment. It is also my recommendation
15 and to keep the lines moving in my opinion for
16 high-speed train system. The revised EIR document that
17 has been presented in brief today sets forth all the
18 details and the rationale why the decision was made, but
19 the bottom line in my view is based on careful
20 assessment that I and the team made but also I, as the
21 CEO, is that this Pacheco Pass is the route which is
22 most consistent with the purpose and the objective of
23 high-speed rail and is the right way to connect the
24 metropolitan areas of the Bay Area with the Central
25 Valley and southern California.

1 I know that many discussions have taken place,
2 many would call them, reasonable minds have conferred
3 about this choice, and there's a long history, I think
4 going back more than ten years, about this choice.
5 However, I must repeat that in my professional opinion
6 and based on my experience with high-speed rail systems
7 in other countries, the Pacheco Pass, which is the
8 straight line, the direct approach into the peninsula,
9 is what I would also recommend, and of course, I stand
10 by this recommendation of staff, which is being
11 presented to you today. Thank you.

12 CHAIRMAN RICHARD: I appreciate those
13 comments, Mr. Van Ark. I know this issue continues to
14 come up, and your professional judgement on this, I
15 think, is important.

16 Mr. Hartnett.

17 MR. HARTNETT: Yes. Thank you.

18 I also would like to comment a little bit on the
19 blended approach, because it was brought up as part of
20 public comment.

21 First of all, I'm interested in seeing the
22 response as prepared when we get that final revised
23 draft program EIR for our consideration because I think
24 we'll all be more informed through reviewing the
25 statements that came in and then the response to them as

1 in the final document it will be presented to us for
2 review. So I, you know, am certainly withholding any
3 final opinion on that revised draft program EIR until we
4 see that.

5 But it is -- I think it's important to
6 distinguish between the program EIR and the project EIR
7 and I -- there, there is a project EIR that has not been
8 completed for peninsula section, and to the extent that
9 the blended system is the adopted approach through the
10 business plan -- and we have not adopted the business
11 plan yet. So it's premature to say that I guess, but if
12 it were, it would seem to me that in the project EIR,
13 the project could be defined as a blended system. And
14 that's where -- to the extent people have questions and
15 concerns about what the blended system will look like
16 and how it fits in -- it seems to me, that's where the
17 comments would be more productively addressed by the
18 High-Speed Rail Authority.

19 Is that it's -- the program EIR that we're
20 dealing with now as was articulated in terms of the
21 timeline, what -- we're dealing with something that was
22 overall adopted in 2005 and 2008 and then we have, you
23 know, 2010. It's a program EIR that doesn't deal with
24 the specific aspects of the project EIR. So we just
25 need to make sure we keep that distinction in mind,

1 because I think it increases confusion. And that the
2 current revisions are based upon, you know, appropriate
3 response to the legal decisions that have been made and
4 so that the changes are being made in response to the
5 confines of that legal decision. And so it's different
6 than starting at a whole program EIR all over again.

7 That's not what the court requires. The court
8 requires to do some revisions with respect to particular
9 issues, and that's what this is in response to.

10 CHAIRMAN RICHARD: Thank you, Mr. Hartnett.

11 Other questions? Thank you very much.

12 Next item is an update on the legislation.

13 MS. GREENE-ROSS: Good afternoon, Chair, members,
14 Mr. CEO, Mr. Van Ark. You can start that two-minute
15 clock running because I'm going to take less than that.

16 I just wanted to provide an informational update
17 about the important dates coming up in the legislative
18 calendar that pertain to high-speed rail.

19 We have got notice about both the Senate budget
20 subcommittee hearings and Senate budget subcommittee
21 hearings. There's a prehearing meeting tomorrow, in
22 fact, about -- for Senate budget subcommittee two and
23 advance of their hearing scheduled on March 13th in
24 Mountain View. They're aware that -- you know, fully
25 aware that we will not release our revised business

1 plan. Once we do, there is a prehearing on April 9th
2 and the actual hearing will be on April 18th, the same
3 afternoon as the budget subcommittee takes up our
4 revised business plan.

5 This morning, I received materials on first
6 prehearing assembly budget subcommittee for Caltrans'
7 budget, and just a quick glance through it, I did notice
8 that they did frame, as an issue for discussion, the
9 Governor's proposal with respect to High-Speed Rail
10 Authority any other entities involved is the BC and H
11 agency. Just framing as an issue and mentioning some of
12 the bills that had gone through the legislative process,
13 none of which were enacted last session, recommending
14 the placement of the High-Speed Rail Authority over into
15 BC and H or other places. They just mentioned those
16 issues by reference. And the bill introduction deadline
17 is passed, and we did a brief summary on the ones that
18 we have found so far that relate to high-speed rail, a
19 few of which fell over reintroduction in the last
20 session with a different number, which is just five
21 bills. So there should be more information at the next
22 board meeting on that if there's any additional bills.

23 Any questions, comments?

24 CHAIRMAN RICHARD: Yeah, when do you get us
25 our bond money?

1 MS. GREENE-ROSS: I'll start on the 18th.
2 The other thing that is important to note is that the
3 budget subcommittees in both houses vote up or down if
4 they -- whatever action they take, the full budget
5 committee can review, revisit, or affirm. And then --
6 then both -- if the -- if both houses pass the same --
7 with respect to our budget, we wouldn't go to
8 conference. So we'll wait and see how that goes.

9 CHAIRMAN RICHARD: Okay.

10 MS. GREENE-ROSS: Thank you.

11 CHAIRMAN RICHARD: Thank you. I'm sorry.
12 Questions for Ms. Greene-Ross? Okay.

13 Mr. Van Ark, CEO's report.

14 MR. VAN ARK: Good afternoon, Mr. Chairman,
15 members, it's not going to be long today. I just want
16 to remind everybody of a few dates that you are aware of
17 especially board meeting, but the first one is you did
18 hear from Mr. Fellenz that we're going to the Public
19 Works Board on March the 9th for the RPF approval.

20 Secondly, the business plan, the April 5th board
21 meeting should be seeing the new draft business plan --
22 or sorry -- the new revised business plan and that will
23 be one of the main issues there. You have already heard
24 from Karen a few minutes ago about the planned meeting
25 by -- hearing on March the 13th at 7:00 p.m. in Mountain

1 View on the business plan.

2 Then the next date that I wanted to bring to your
3 attention is the April the 19th, that is also a board
4 meeting. That was a special board meeting that we
5 already mentioned at one of the previous board meetings.
6 It's a board meeting where we -- all of the staff will
7 be presenting the partially revised draft San Francisco,
8 San Jose, or Bay Area to Central Valley programmatic
9 EIR.

10 And then in May, we will have a two-day board
11 meeting, May the 2nd and May the 3rd. The two days are
12 required, most likely required, as it looks in planning
13 now because that's when we will be going into doing the
14 notice of the determination for the EIR for Merced to
15 Fresno. So again, the dates are April the 5th, April
16 the 19th, and then May the 2nd and 3rd are important
17 board meeting dates.

18 So that's where the -- the kind of crux of my
19 meeting. On the hiring side, I think we're aware that
20 the hiring progress is being initiated for a CEO
21 replacement. I would like to make mention that Mr. Tom
22 Fellenz, here on my left, will be having full dedication
23 of authority in my absence. So for those of you who
24 need to contact somebody, that's Tom. He's the right
25 guy to contact, and then I would like to also mention

1 that Carey Moore is our new board secretary. So there's
2 a bit of shuffling taking place in the office, but as
3 you see, she's here today, and hopefully, by next week
4 or so, we're going to be able to replace the previous
5 position and have a full-time board secretary, and I
6 wish you well there.

7 Then I would just like to close and say it has
8 been a great pleasure to be with all of you. Thank you
9 very much board members, Mr. Chairman but in particular,
10 also our staff. Everybody, thank you for the great
11 support. Keep it up. We want to build this system in
12 California. High-speed rail is going to come to
13 California. Just stick together and make it happen, and
14 I'm here in California, but don't worry.

15 But I really want to thank you all for the
16 support I have received in the last -- close to two
17 years. Thank you.

18 CHAIRMAN RICHARD: Thank you, Mr. Van Ark,
19 and I know that we're a little thinly attended at the
20 moment but this will -- I'm quite confident that this
21 will not be your last visit to the High-Speed Rail
22 Authority. We're certainly going to want to have your
23 expertise in whatever way we can and wish you well. And
24 I know we're going to have an opportunity to do that
25 later today, but I just want to say on record that I

1 know all my colleague and I wish you the best in your
2 endeavors, and we thank you for your services to this
3 Authority and the people of California.

4 MR. VAN ARK: Thank you very much.

5 CHAIRMAN RICHARD: Mr. Balgenorth.

6 MR. BALGENORTH: Actually, I had a question.
7 It wasn't directly related to the report but it was --
8 you'd probably be the person that would know the answer
9 to it. It was Item Number 3 on the agenda. There was a
10 gentleman that made a public comment that there were --
11 well, he indicated there might have been numerous
12 agencies or numerous contractors that applied to the
13 Design-Build project that were excluded. Were there any
14 that were excluded?

15 MR. VAN ARK: I think whoever made that
16 statement -- was a misstatement. We had -- it was a
17 qualification, RFQ, Request for Qualification. We did
18 have five parties or five groups applying for it, and we
19 found that all parties were sufficiently qualified to go
20 to the next round. So we had five parties and five were
21 qualified to go to the next round.

22 MR. BALGENORTH: So there wasn't anybody
23 that was --

24 MR. VAN ARK: There wasn't anybody excluded
25 on that basis.

1 MR. BALGENORTH: Well, thanks for clarifying
2 that.

3 And just one other thing. I'd just like to say,
4 you've taken your holiday to a new high by coming here
5 for your vacation. So I got to say thank you for that,
6 but I question the wisdom of it.

7 MR. FELLENZ: Mr. Balgenorth, I wanted to
8 just mention that we do have an organizational conflict
9 of interest policy. So it is possible that companies
10 that worked on certain aspects of the High-Speed Rail
11 Authority project could be excluded from other parts
12 because of conflicts that we have. So that conflict of
13 interest policy, which is organizational. It's on our
14 website, and there are some companies that ask me, as
15 chief counsel, whether there's a conflict, and there
16 have been some circumstances where there were.

17 MR. BALGENORTH: I see. Okay. Thank you.

18 CHAIRMAN RICHARD: Thank you. Member
19 reports? I have a short 35-minute member report.

20 MR. HARTNETT: To whom are you going to give
21 it?

22 CHAIRMAN RICHARD: I believe that's the
23 point where I say, there being no further business
24 coming before the High-Speed Rail Authority today, thank
25 you.

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(Whereupon the proceedings concluded at 3:18 p.m.)

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1 I, Brittany Flores, a Certified Shorthand
2 Reporter of the State of California, duly authorized to
3 administer oaths, do hereby certify:

4 That the foregoing proceedings were taken before me
5 at the time and place herein set forth; that any
6 witnesses in the foregoing proceedings, prior to
7 testifying, were duly sworn; that a record of the
8 proceedings was made by me using machine shorthand which
9 was thereafter transcribed under my direction; that the
10 foregoing transcript is a true record of the testimony
11 given.

12 Further, that if the foregoing pertains to the
13 original transcript of a deposition in a Federal Case,
14 before completion of the proceedings, review of the
15 transcript () was () was not requested.

16 I further certify I am neither financially interested
17 in the action nor a relative or employee of any attorney
18 of party to this action.

19 IN WITNESS WHEREOF, I have this date subscribed my
20 name.

22 Dated:

25 Brittany Flores CSR 13460